

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

OCTOBER 16, 2019

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA JOHN, Board Member
CARLTON HART, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Vice Chair

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.
JACOB RITTING, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MATTHEW JESICK
STEPHEN J. MORDFIN
ELISA VITALE

The transcript constitutes the minutes from the
Public Hearing held on October 16, 2019.

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P-R-O-C-E-E-D-I-N-G-S

10:31 a.m.

CHAIRPERSON HILL: Okay, Mr. Moy, whenever you like.

SECRETARY MOY: Thank you, Mr. Chairman. The Board is back in session, and the time is at or about 10:30 a.m.

So if we can have parties to the table to appeal number 20026 of the Arboretum, I don't think I pronounced that correctly, Arboretum, sorry, Neighborhood Association.

This is the appeal from the decision made on January 27, 2017, by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue an unpublished zoning certification in response to a request to certify that a community-based institutional facility adult rehabilitation center is a matter of right use in the PDR-1 Zone that is at 3400 New York Avenue N.E., square -- rather Parcel 173/118.

CHAIRPERSON HILL: All right. And Mr. Moy, there is a motion to dismiss for lack of jurisdiction before us also. Is that -- okay.

SECRETARY MOY: That is correct.

CHAIRPERSON HILL: All right. Okay. If we could please introduce ourselves for the record from my right to left.

MS. LORD-SORENSEN: Good morning, Chairman Hill

1 and members of the Board. Adrienne Lord-Sorensen, Assistant
2 General Counsel with the D.C. Department of Consumer and
3 Regulatory Affairs.

4 MR. LEGRANT: Good morning. Matthew LeGrant,
5 Zoning Administrator, DCRA.

6 MR. GLASGOW: Norman M. Glasgow, Jr., the law firm
7 of Holland and Knight here on behalf of the property owner,
8 and we have a separate request that the case be dismissed.
9 My appearance and brief statement are at Exhibits 22 and 23.

10 CHAIRPERSON HILL: Okay, Mr. Glasgow.

11 MR. TEMPLE: Good morning. Donald Temple, for the
12 Arboretum Association.

13 COMMISSIONER MANNING: Good morning. Commissioner
14 Manning, Chair of ANC 5C, single-member district 5C04.

15 CHAIRPERSON HILL: Good morning, Commissioner.

16 COMMISSIONER MANNING: Good morning.

17 CHAIRPERSON HILL: All right. Mr. Temple, if you
18 want to turn off that microphone there just so I don't get
19 any feedback up here. Thank you.

20 All right. So I guess, Ms. Sorensen, we have your
21 motion, DCRA's motion to dismiss. Could you please kind of
22 walk us through that motion a little bit?

23 MS. LORD-SORENSEN: Certainly. So the appellant
24 in this case has appealed the Zoning Administrator's issuance
25 of a January 25th, 2017 zoning certification, and we provided

1 a copy of that as part of our filing, and when you read the
2 zoning certification, it simply says that a community-based
3 institutional facility, aka. adult rehab center, may be built
4 at 3400 New York Avenue N.E. and -- in a PDR-1 zone, and this
5 would comply with the D.C. zoning regulations.

6 However, when you look at the zoning
7 certification, at the very bottom it says, and I quote,
8 "Certificate of the proposed use upon the indicated date does
9 not imply future approval of building plans and/or
10 certificates of occupancy."

11 So the appellants are appealing the issuance of
12 this zoning certification, and DCRA's position is that the
13 Board lacks jurisdiction because the appellant is not
14 alleging that there's any violation of the zoning
15 regulations. They're not saying that this type of facility
16 cannot be built at this particular location in accordance
17 with the zoning regulations.

18 Specifically, their issue is that there is an
19 alleged due process violation, and when you look at the
20 Board's enumerated powers on 11-Y DCMR 100.4, a due process
21 violation is not the type of issue that the Board would hear.
22 That would be heard in a different venue which is DCRA's
23 opinion. And so in light of that, we think that the Board
24 actually lacks jurisdiction to hear this case and should deny
25 the appeal.

1 CHAIRPERSON HILL: Okay. Does anybody have any
2 questions of DCRA concerning their motion?

3 ZC VICE CHAIR MILLER: Yes.

4 CHAIRPERSON HILL: Sure.

5 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman.
6 The -- I understand what you're saying. I understand the
7 argument that you're making. When you say that the
8 certificate -- the certification, does it -- has that
9 statement that it doesn't imply or indicate that building
10 plans or C of O are being approved.

11 Are you saying that the -- that those would be
12 potentially appealable actions in issuance of the C of O or
13 building permit or are you -- I guess my -- let me clarify
14 my question. Do you consider this -- that zoning
15 certification, the first writing, that that is appealable
16 under the zoning regulations?

17 MS. LORD-SORENSEN: We do not consider a zoning
18 certification any sort of final determination or anything
19 that's appealable. It's just stating what can or cannot be
20 built in accordance with the regs in a particular zone.
21 That's all that the zoning certification serves.

22 ZC VICE CHAIR MILLER: So if a building permit was
23 applied for or a C of O was applied for, and the neighborhood
24 association was alleging some kind of error, that would be
25 appealable not necessarily approved -- successfully appealed,

1 but it would be appealable?

2 MS. LORD-SORENSEN: Assuming again that there's
3 an alleged violation of the zoning regulations, then yes,
4 that would fall under the Board's purview.

5 ZC VICE CHAIR MILLER: Okay. Thank you very much.

6 VICE CHAIRPERSON HART: Thank you, Ms. Lord-
7 Sorensen. Just a couple of points of clarification or maybe
8 just more information, and maybe this is Mr. LeGrant, the
9 zoning certification letter, are those normal? Do you do
10 those normally?

11 MS. LORD-SORENSEN: Yes.

12 VICE CHAIRPERSON HART: Does DCRA or the Zoning
13 Commissioner do that normally?

14 MS. LORD-SORENSEN: Yes. It comes out of the
15 Zoning Administrator's Office.

16 VICE CHAIRPERSON HART: And do you have an idea
17 of how many that actually come out on an annual basis or
18 quarterly, or just some sort or --

19 MR. LEGRANT: I would say that we probably do
20 maybe one or two a month, probably two to four a month, and
21 I will say that the most frequent use of the zoning
22 certification is for applicants who are penning an
23 application before ABRA in terms of their ability to secure
24 a liquor license, and in that regard the most often use of
25 the form is to locate, or is to indicate that a particular

1 location is in a zone that provides -- allows for the sale
2 or service of alcohol and then all the licensing aspects are
3 covered by ABRA.

4 VICE CHAIRPERSON HART: And in that case, that
5 zoning certification may be part of the ABRA kind of process,
6 it wouldn't be, it's not necessarily a -- while it is a
7 zoning thing, it is not something that would come before the
8 BZA unless it was some sort of relief that they were needing
9 to get.

10 I'm just trying to see that this is something that
11 is a matter of right, that you're stating is a matter of
12 right use in this location, but there may be some other
13 relief that is necessary because of the size of the building,
14 because of some other things that are going on. That doesn't
15 keep an applicant from getting that, it just is -- it's just
16 stating that that use is allowable in this location?

17 MR. LEGRANT: That's correct.

18 VICE CHAIRPERSON HART: Okay. And one last
19 question. Do you -- are these typically things that you send
20 out to ANCs, send out to whomever and if you could just talk
21 a little bit about that process, or at least the thinking on
22 that.

23 MR. LEGRANT: Yes. They are not sent out to ANCs
24 or any other outside party. It provides simply an indication
25 to an applicant, or a prospective applicant, as to whether

1 that use is allowed in that zone and then that, again, using
2 the ABRA example, they utilize that as a way to proceed with
3 an ABRA license application.

4 ABRA, from their perspective, and I think rightly
5 so, is don't come to us to apply for a liquor license if you
6 can't even do it there. And as a threshold issue, before they
7 start their licensing, they want that so they can proceed.
8 It's more just a statement restricted to only the use, not
9 any other zoning standard.

10 VICE CHAIRPERSON HART: Thank you.

11 CHAIRPERSON HILL: Thanks, Mr. LeGrant. I'm a
12 little surprised that it's that infrequent. You know,
13 there's only a couple of people -- I thought -- I would think
14 that that's kind of a norm that my people would come back,
15 come forward and see whether or not they think what they can
16 do is something that they would be able to do. I'm just
17 making a statement.

18 The other is that I don't know about Ms. Lord-
19 Sorensen asked -- answered the question or concerns of the
20 first writing rule. Like, you guys wouldn't think that this
21 is then something that -- and I'm not necessarily speaking
22 of this case, but just as something that would apply for the
23 first writing rule, correct?

24 MS. LORD-SORENSEN: We would not consider this to
25 be any sort of final determination that would then fall under

1 the first writing rule. It's just letting you know that this
2 type of use is permissible in a zone. That's it.

3 CHAIRPERSON HILL: I understand. I'm just
4 thinking about for other cases that might come before us in
5 terms of an argument as to when the first writing rule does
6 come into effect, to follow up with Commissioner Miller's
7 question. Does anybody else have any more with her -- yes,
8 please.

9 MEMBER JOHN: Yes. One question for DCRA. So how
10 does the certification differ from the standard certification
11 that DCRA issues in an application for the BZA, to say this
12 type of relief is needed or not, or yes, this is a matter of
13 right project, so you're free to go ahead.

14 MR. LEGRANT: I distinguish the zoning
15 certification, again, it's a one-page statement as to whether
16 that use is allowed in that zone. It differs from a -- the
17 BZA transmittal memo that my office provides to the Board as
18 a specification of the specific relief of a particular
19 application.

20 In that case, there's almost always a pending
21 building permit or C of O application before DCRA that is
22 identified as not a matter of right and therefore the relief
23 is enumerated for the Board's information when it considers
24 an application.

25 MEMBER JOHN: So if you issued a letter to a

1 potential developer saying that this is a matter of right
2 project in that zone, and the developer relied on that
3 representation, what would be the legal impact of that email?
4 Because I see these frequently where the BZA will say this
5 is an MOR -- I'm sorry -- the ZA will say this is a matter
6 of right project, and no relief is required.

7 So in my view, there's no distinction between this
8 certificate and that email because they do the same thing.

9 MR. LEGRANT: Well, I believe you're referring to
10 a very -- I issue, I call them confirmation emails when an
11 applicant or a representative of an applicant comes before
12 me to say we have a project that we believe is a matter of
13 right and for these reasons. But it's detailed enough to
14 have a use, a building form, you know, plans that indicate
15 what exactly the project would entail, and then those
16 confirmation emails I would email to the applicant or their
17 representative is, oh, my analysis of your project is that
18 it meets the zoning requirements because of all the specific
19 enumeration of the use, the development standards, which is
20 parking, lot occupancy, height and so forth.

21 So that applicant has some comfort level that they
22 can proceed. It does not mean that that project is approved.
23 They still have to apply for a building permit. It still has
24 to go through an analysis to ensure that all zoning
25 regulations are satisfied.

1 MEMBER JOHN: And so just to follow up. Those
2 email confirmations are not the final determination of the
3 ZA as to whether or not that project can be built. They
4 achieve the same purpose as the certificate in my mind. The
5 certificate says this project meets the zoning regulation.
6 In general, the use is appropriate --

7 MR. LEGRANT: Right.

8 MEMBER JOHN: -- and the email confirmation says
9 this particular project, on the face of it, looks like a
10 matter of right project, so they achieve sort of the same
11 end.

12 MR. LEGRANT: Well, I'll say this. The zoning
13 certification that we are presenting today is only restricted
14 to use. It doesn't talk about any other aspect of the zoning
15 regulations, whether the building that it's in meets
16 requirements where the parking is satisfied, so on and so
17 forth.

18 You can distinguish that from a zoning
19 confirmation where it gets into -- and an applicant comes to
20 us because they're trying to ensure that their proposal is
21 in compliance with the regulations, and I will assure you
22 that many applicants who come before me, they get the news
23 and when I tell them that no, you might need some relief.
24 Your loading doesn't, for example, may not meet the
25 requirements, or your height, you've misplaced your building

1 height measuring point measurement. So they would try to
2 then maybe redesign the project to come into compliance.

3 MEMBER JOHN: Thank you.

4 CHAIRPERSON HILL: Okay. So Mr. Temple,
5 Commissioner, so you guys know --

6 MR. GLASGOW: Mr. Chairman?

7 CHAIRPERSON HILL: Sure.

8 MR. GLASGOW: I've done the proper --

9 CHAIRPERSON HILL: Mr. Glasgow?

10 MR. GLASGOW: Yes. Because I move for a dismissal
11 also.

12 CHAIRPERSON HILL: Order -- sure. That's okay.
13 I mean, the order that I was going in was I was just going
14 to the applicant and then come back to the property owner,
15 but -- yes, so that was -- I was just trying -- but if you
16 do have something that you'd like to add in terms of the
17 dismissing as moot, then please go ahead, Mr. Glasgow,
18 because that way the applicant can hear everything at the
19 same time.

20 MR. GLASGOW: Thank you, Mr. Chairman. For the
21 record, again, I'm Norman M. Glasgow, Jr., of Holland and
22 Knight. The property owner, Jemal's Academy, LLC, on August
23 15th, 2019, received a letter alleging an error in
24 determination of a decision made by the administrator or
25 officer of enforcement of the zoning regulations at a

1 property you own or lease.

2 So the property owner was directed or notified to
3 appear before the Board of Zoning Adjustment on Wednesday,
4 October 16th concerning at this particular premises, an adult
5 rehabilitation center, as being a matter of right use at this
6 premises, 3400 New York Avenue N.E.

7 The property owner has no agreement, no use of the
8 property or anything dealing with an adult rehabilitation
9 center at this site. So therefore, there is no case or
10 controversy concerning this property.

11 This all ties into this property and the owner's
12 alleged either allowing or using the property for an adult
13 rehabilitation center. There was no agreement to use the
14 property for that. The applicant's not using it. The
15 property is presently vacant.

16 So we would dismiss that this case should be
17 dismissed. It's filed with respect to this property, and
18 this property there's nothing on record for it to be used as
19 an adult rehabilitation center with respect to anything that
20 the property owner has agreed to.

21 CHAIRPERSON HILL: Okay. All right. Thank you,
22 Mr. Glasgow. Sure. Does the Board have any questions of Mr.
23 Glasgow?

24 MEMBER JOHN: Just one question. So how long has
25 this owner owned the property?

1 MR. GLASGOW: I'm not sure, but it's been several
2 years because I worked on the property when there was a
3 change in the comprehensive planned land use map with respect
4 to the site. So that would have been the last cycle, which
5 would have been at least since I guess 2012.

6 CHAIRPERSON HILL: Okay. All right. So Mr.
7 Temple, Commissioner Manning. Manning? Is that correct?

8 COMMISSIONER MANNING: Manning.

9 CHAIRPERSON HILL: Manning. Thank you. You'll
10 want to pull that microphone down if you guys want to speak.
11 I forget. Did everybody get sworn in?

12 MR. TEMPLE: Yes.

13 CHAIRPERSON HILL: Okay. All right. Is there
14 anyone here that hasn't gotten sworn in that wants to speak?
15 Okay. Okay. All right. Sure. If you wouldn't mind
16 standing, and then Mr. Moy, if you wouldn't mind
17 administering the oath?

18 SECRETARY MOY: Not at all, Mr. Chairman.

19 (Witnesses sworn.)

20 SECRETARY MOY: Thank you. You may be seated.

21 CHAIRPERSON HILL: All right. So Mr. Temple, I
22 guess what I'm asking you, a couple of things, so you've
23 obviously read the record and seen what things that DCRA has
24 submitted in terms of their motion to dismiss, is that it's
25 just not within our purview is one area. So I'm going to go

1 ahead and let you speak a little bit to that, and then if you
2 want to speak to the property owner's statement, you can as
3 well.

4 The one question that I did have is, I mean, I
5 would, you know, we kind of have this motion first before us
6 in terms of whether or not this is even within our
7 jurisdiction, right.

8 So there's that and you can go ahead and speak to
9 that, and then if we did get past that we'd get more to the
10 appeal I suppose, which is even I'm a little bit unclear as
11 what exactly you, as an appellant, is bringing forward that
12 is the Zoning Administrator's error, right.

13 So before getting to that, why don't you just give
14 us your thoughts on the motion to dismiss, as this isn't
15 necessarily within our jurisdiction?

16 MR. TEMPLE: Okay. Can I try -- first of all,
17 thank you each for your time and your patience on an issue
18 that has some historical context here before this panel and
19 in this community. And it's somewhat convoluted, and it's
20 certainly not as simplistic as the Government presents.

21 What we are fundamentally arguing here is both a
22 substantive question and a process question. The substantive
23 question is not merely the zoning certification, but it's the
24 zoning regulations that are effectively certified or opined
25 on in this document.

1 And under D.C. Code, this particular certification
2 constitutes effectively a decision or a determination,
3 notwithstanding the intentions of Mr. LeGrant. When it
4 states that the above-stated proposed use of the subject
5 premises "would comply with the D.C. zoning regulations."

6 The heartbeat of the problem is this, is that some
7 years ago here, another halfway house came into D.C. and it
8 said that -- and we sat in this room, and it said that it too
9 had a matter of right. Therefore, there was no notice, no
10 discussion with the Board, no discussion with the Government,
11 it then built a halfway house. That halfway house was
12 challenged by the community just like we're sitting here,
13 saying that you can't do that as a matter of right.

14 And it came here, there was a 4-1 decision here,
15 and it went up to the Court of Appeals which affirmed this
16 Board's decision -- this panel's decision which ruled with
17 the community that you couldn't do it as a matter of right.

18 Well, the problem is that in that context, the --
19 between 2016 and 2017 when this document came out,
20 regulations were amended. The community-based residential
21 facility definition and the previous regulations was removed.
22 The term "halfway house" became an undefined term.

23 Consequently, there is in the present law, when
24 we talk about community-based institutional facility, not
25 residential, an adult rehabilitation center, there's a vagary

1 as to what constitutes a halfway house.

2 As a result, what the halfway house did, and was
3 able to do, was to come in and it is much more complex
4 because they took this certification, they then presented
5 this to the Bureau of Prisons, and told the Bureau of Prisons
6 the District of Columbia government has certified us to have
7 -- that this is a matter of right project. The Bureau of
8 Prisons relied upon that representation. Not only that, the
9 developer at the halfway house relied on that --

10 CHAIRPERSON HILL: Mr. Temple, I'm sorry. I'm
11 just trying to figure out. So you're talking about a
12 previous thing or --

13 MR. TEMPLE: I'm talking about this --

14 CHAIRPERSON HILL: -- now you're talking about
15 this one right now?

16 MR. TEMPLE: I'm talking about this one here.

17 CHAIRPERSON HILL: Okay.

18 MR. TEMPLE: And what's critical here and what's
19 significant is that you can go to the Zoning Administrator's
20 office and in five minutes obtain one of these documents.
21 Literally. With this certification. And in this particular
22 situation, notwithstanding his intentions, it has a legal
23 implication. It is effectively a decision, based upon this
24 document, a halfway house went to the Bureau of Prisons and
25 said, this is what the City says, and they included it in

1 their package.

2 The problem was is that the affected community
3 received no notice whatsoever of this document. No notice
4 of the extent to which it would be used for a halfway house
5 in its community, and it only learned of that when there was
6 a decision by the Bureau of Prisons and this document came
7 to their attention circuitously, and the point of this, to
8 go to your question and to the issue here, is twofold.

9 One is that the community challenges this
10 certification but more so or also challenges the
11 certification process. This community is today speaking on
12 behalf of Arboretum, but tomorrow it could be Brightwood.
13 It could be Southwest. It could be any community because the
14 problem is that this certification as it exists was issued,
15 and the fundamental underlying zoning regulation issues are
16 basically still unresolved. A community-based institutional
17 facility and adult rehabilitation center, and its rights were
18 totally obviated as a result.

19 So it was unable to challenge the action in a
20 contemporaneous context, and it was able to -- unable to --
21 only vehicle in which that can affect a community, other than
22 the zoning regulations which expects that an affected
23 community when there's a decision -- and the section upon
24 which we're relying is the same section the City is relying
25 upon, but it's D.C. Code 6-64107, and that's (f) and (g), and

1 this is a decision. We have a right to appeal it.

2 So from that point of view, you have the
3 jurisdiction to consider this decision. It is effectively
4 a decision or a determination, particularly because of its
5 legal implications. That's point one.

6 Point two is as to the issue of due process, and
7 that's why I explained in the beginning, the issue is
8 substantive and procedural. As to the issue of due process,
9 this Board is governed by the Administrative Procedural Act.
10 The Administrative Procedural Act of the District of Columbia
11 anticipates that if there is a dispute or a right that the
12 citizens have some way to make a record and to contest or
13 challenge that right.

14 In this situation, what we're saying to you is
15 that our rights and the burden that you're putting on the
16 community, is that the community can't come to you and then
17 if we have no rights to come to you, then we have to find a
18 way to go to the courts to say, hey, listen, we don't have
19 a right, an administrative procedural right here, even though
20 we have a contested claim.

21 And so that's part of what we're asking for here
22 in terms of the relief. We're saying that it's critical that
23 this Board recognize the community's victimization, but more
24 importantly it also recognize its right to bring a claim to
25 reconcile that victimization which is twofold.

1 One is to address this significantly flawed, we
2 think, document that allows, in this particular case, the
3 Zoning Administrator to have given to a halfway house, a 300-
4 bed halfway house, in the Arboretum community without any
5 consideration whatsoever against the substantive question of
6 the vagaries of the laws. And counsel is correct. The
7 community perhaps did not challenge the fact that we are
8 challenging even that classification or the use status, as
9 a matter of right here.

10 Again, that goes back to another kind of due
11 process question because there's vagaries in the regulations
12 now as a result of the amended regulations. Shifting to --

13 CHAIRPERSON HILL: Okay, Mr. -- Timothy, just one
14 second. So I have a quick question, and then you can come
15 back. I guess you're going to move on to now you were going
16 to speak to the property owner's claim?

17 MR. TEMPLE: Yes, sir.

18 CHAIRPERSON HILL: Okay. So I'm just curious, Mr.
19 LeGrant, again, as far as the -- oftentimes, I can't recall.
20 Like in terms of, like, you know, there's a matter of right
21 use that's being permitted and someone, you know, comes there
22 and they say they want to build a CBIR, and so it's a matter
23 of right use and then the community, again, how they find
24 that out is how?

25 MR. LEGRANT: For a matter of right project, the

1 zoning regulations require -- there's no notice requirement
2 to neighbors or ANCs for a matter of right project.

3 CHAIRPERSON HILL: Mr. Timothy, could you turn off
4 that microphone there? I get feedback. Thanks.

5 MR. LEGRANT: What DCRA does is all building
6 permits that are issued are provided through a notification
7 to -- on a website to ANCs, so ANCs become -- can get --
8 become aware of --

9 CHAIRPERSON HILL: I'm sorry. Can you start
10 again?

11 MR. LEGRANT: Sure.

12 CHAIRPERSON HILL: I just got a little distracted.
13 Sorry.

14 MR. LEGRANT: Okay. Okay.

15 CHAIRPERSON HILL: I kept calling Mr. Temple Mr.
16 Timothy, and I didn't know how I got Mr. Timothy. So Mr.
17 Temple, sorry about that.

18 So Mr. LeGrant, please.

19 MR. LEGRANT: Okay. So again, a matter of right
20 project, there's no notice requirements in the zoning
21 regulations to neighbors or ANCs. What DCRA does is it
22 publishes, when a building permit is issued, the list of
23 building permits are given -- ANCs are given access to those
24 lists of building permits in their particular jurisdictions,
25 ANC 5, ANC 6 or whatever, so they can see what building

1 permits have been issued, and then they -- I believe it's
2 both by building permit number and address, so they can then
3 look more into that building permit information on DCRA's
4 website.

5 CHAIRPERSON HILL: And this goes back to that
6 first writing thing. So then the notification, there is --
7 and DCRA sends out a notification about the building permits,
8 or it's on the ANC's to find those building permits?

9 MR. LEGRANT: I believe -- and I'll be up-front
10 with you --

11 CHAIRPERSON HILL: Sure.

12 MR. LEGRANT: -- I'm not familiar with some of the
13 logistics of those, but I believe that ANCs are given access
14 to a website, a web page that says --

15 CHAIRPERSON HILL: Are the ANCs the only ones that
16 are given to that or the general public can also have access
17 to that?

18 MR. LEGRANT: I believe it's -- the access is for
19 ANCs.

20 CHAIRPERSON HILL: Okay. All right.

21 MR. LEGRANT: I will say that all building permits
22 that are issued can be accessed by any person --

23 CHAIRPERSON HILL: No, I understand. I'm just
24 trying to -- I mean, and Mr. Temple and Commissioner, I'm
25 just even thinking about other issues that kind of, like,

1 come before us in terms of notice. I mean, we'll get to what
2 you're speaking to, but -- okay.

3 So Mr. Temple, you had a response in terms of the
4 property owner? You can go ahead and respond.

5 MR. TEMPLE: And thank you. And before that, I
6 want to underscore that our fundamental reason for being here
7 is notice, because the zoning regulations anticipate that
8 while there are structural developments of this particular
9 type, and as a matter of right, if you're putting a 300-
10 person unit halfway house in a community, perhaps where there
11 are schools, perhaps where there are homes, the community is
12 affected and the community should know.

13 The distinction, however, is that the Government
14 would say that they should know when there's a permit, but
15 this issue is not about you having a matter of right and then
16 you get a contract from the Bureau of Prisons for five years,
17 and then there's a question of whether you have a permit and
18 there's an intended agreement with the landowner.

19 To that issue, I'm pleased to note, because I
20 certainly had no communication with this gentleman here
21 before this moment here regarding this particular issue, but
22 the question is, is that as you review the zoning
23 certification which is attached to your records, the zoning
24 certification states that a request was made to certify the
25 proposed use of the property located at that particular

1 premises.

2 You should know that that particular halfway house
3 is caught up in litigation, but there's nothing definitive
4 on the record that the community has known where there's been
5 some statement that at some point in the future that the
6 landlord will not provide that facility to that entity.

7 So we would be sensitive to the mootness of an
8 issue if there were a definitive statement that added an item
9 this won't happen, but if it's an issue that's under
10 negotiation or where there's some certain contingencies that
11 might inform that decision in the future, we're back here
12 again, and we don't want to be back here, and we want to try
13 to make sure wherever we are that the community knows because
14 there are people who are affected.

15 There are lots of people that have been to
16 community meetings; there are lots of people that are
17 concerned on all sides about this issue.

18 CHAIRPERSON HILL: Okay. All right. All right,
19 Mr. Temple, and Commissioner, I don't know if you have
20 anything you'd like to add at this point. I mean, I think
21 you understand, like, some of the issues that we had before
22 us, right -- we're just trying to -- and Mr. Temple, I know
23 that you hold that piece of paper up and you believe that
24 that's what is a definitive statement by the Zoning
25 Administrator that is something that we then -- you then

1 could appeal.

2 I don't necessarily agree with that, you know, and
3 that's just because I -- we've been through this before in
4 terms of what is a permit that they can actually appeal and
5 so -- but regardless I'm just kind of making a statement --

6 MR. TEMPLE: I appreciate your indulgence though
7 because --

8 CHAIRPERSON HILL: Sure.

9 MR. TEMPLE: -- I would ask also -- because the
10 question I think is a significant question, and there are
11 issues that counsel has legitimately raised, and I've been
12 researching them in the midst of another matter that I'm in.
13 And before you would make that decision, I would just ask
14 your indulgence because I don't know that there's necessarily
15 a rush, but I'd like the opportunity to give you a more
16 detailed writing or written response.

17 We just -- this was filed last week and this was
18 filed six months ago, and I had an opportunity to read it and
19 a brief opportunity to talk to counsel, but if you're going
20 to make a serious decision about the standing of the
21 Arboretum Citizens Association and your jurisdiction to hear
22 a matter of the circuit, I'd just like for you to have a more
23 developed record so that you can have a -- make a more
24 informed decision.

25 CHAIRPERSON HILL: Okay. That's all right. I'm

1 not saying -- I'm just one vote. You know, I was just kind
2 of making a comment in terms of trying to understand what
3 we're trying to do here before I turn it over to the
4 Commissioner, who has also spent her time to come down here.
5 And so I just wanted, Commissioner, to give you an
6 opportunity.

7 I mean, there's a lot of things that Mr. Temple
8 said in terms of like what had happened to this property
9 previously, and you know, that is not necessarily before us
10 right now, but historically where we're getting to, like, I
11 mean, if this were actually a -- and maybe I'm again sharing
12 more of my opinion at this point -- if this were actually a
13 permit that had for a CBIR here, then that would be something
14 that like I would have a little bit more understanding to how
15 we would kind of go -- move forward with it. But before Mr.
16 Temple, I just want to allow the Commissioner to speak on the
17 record about whatever you would like to speak on since you
18 came down here.

19 COMMISSIONER MANNING: Good morning. Thank you
20 for the opportunity. The challenge is the matter of right
21 because regardless of if it's matter of right or not --

22 CHAIRPERSON HILL: I'm sorry. Could you say that
23 again? I missed what you said.

24 COMMISSIONER MANNING: The challenge is the matter
25 of right because the Commission nor the community is properly

1 notified. I live in Arboretum community, so I know not just
2 here as a Commissioner, I'm here also as a resident of that
3 area.

4 And this could happen anywhere because what
5 happens is the client or whoever will come afterwards back
6 to the ANC and ask for a letter of support. But when you're
7 impacting a community such as this, with this document that
8 we have -- he's saying we have access to, we do not. This
9 was never given to us.

10 So the ANC was never properly notified, and if it
11 is a matter of right, the ANC should be and the community
12 should be. Arboretum has a very active civic association,
13 and it should be given out to everyone so they can see what's
14 going on, and not after the fact.

15 So if they're saying that we have access to this,
16 we do not. ANC does not have access to this. DCRA does not
17 do their due diligence in making sure the information is
18 there, and we have to define a matter of right for the
19 community. Thank you.

20 CHAIRPERSON HILL: Okay. Thank you, Commissioner.
21 The -- any questions for anyone from the Board?

22 VICE CHAIRPERSON HART: I did have a question for
23 Ms. Manning. Commissioner Manning, thank you for coming out
24 to the meeting today.

25 The question is, in some ways, the argument that

1 you're making and that Mr. Temple is making is really around
2 changing the zoning regulations so that there is notification
3 that is part of the zoning regulations so that this is no
4 longer something that the Zoning Administrator has to kind
5 of make into practice or make as part of their operational,
6 you know, procedures to do X and Y, to submit whatever to
7 whomever.

8 The issue that I'm kind of running into is, we're
9 not the ones that changed the zoning regulations. That's the
10 Zoning Commission. They're the ones that have to look at the
11 City as a whole, that Mr. -- Commissioner Miller sits on,
12 that they have to then say, this is what the zoning
13 regulations should state, and this is what they should be
14 included in it.

15 We were not part of that discussion. What we have
16 to do is to look at the existing zoning regs and to
17 understand what is allowed or not allowed as part of what is
18 already written in them. It's not -- while we do some
19 interpretation, it's not wholesale changes to the zoning
20 regulations.

21 So I wanted to make sure that you were
22 understanding that and not -- and I'm not sure -- some of
23 this sounds like it is falling outside out of how we look at
24 and what our purview is, but again, it's more of a statement
25 than a question, I guess. If you can speak to that.

1 COMMISSIONER MANNING: I understand your statement
2 and your question. The challenges for ANCs, yes it does,
3 when it comes to this hearing, we have to paddle back. But
4 if we don't acknowledge it here to work through it, we'll
5 never get it resolved through what Mr. -- the Board -- the
6 other Board that Mr. Miller sits on.

7 So when we're trying to get stuff done, we have
8 to bring it up in this hearing, unfortunately. It may seem
9 like it's -- that we're not understanding the process of
10 getting people to hear us, so it comes in the -- it comes up
11 in the hearing so we can have that conversation because
12 there's plenty of background that we can go through at a
13 hearing, but the process is when the other board that Mr.
14 Miller sits on, is getting them to understand when they did
15 the amendments to do the rewrites, we totally understand.

16 The ANCs are not stupid. They're just trying to
17 make sure that we are safeguarding our communities, and a lot
18 of times, we have a challenge of getting through the Board
19 of Zoning of what's happening because in some cases, there
20 are developers and there are attorneys that feel that they
21 can just bulldoze straight through the community and we're
22 not going to let that happen.

23 VICE CHAIRPERSON HART: And I apologize for if you
24 -- I was not saying that the ANCs are stupid or anything.
25 I was really merely saying that there is a difference between

1 our -- this Board and the --

2 COMMISSIONER MANNING: No. We clearly understand
3 it.

4 VICE CHAIRPERSON HART: And I appreciate --

5 COMMISSIONER MANNING: So let me say for me.

6 VICE CHAIRPERSON HART: Yes.

7 COMMISSIONER MANNING: I clearly understand.

8 VICE CHAIRPERSON HART: Okay. Thank you, very
9 much.

10 COMMISSIONER MANNING: But there is a perception
11 that people feel that about all ANCs and what's happening in
12 the City and in their communities, and that we're trying to
13 speak of to make sure that we -- that everyone understand
14 that.

15 VICE CHAIRPERSON HART: Noted.

16 COMMISSIONER MANNING: Because a lot of times,
17 with lot of the changes that are going on, especially with
18 the land transformation in Ward 5 that McDuffie and Gray did,
19 we just want to make clear that Ward 5, especially in ANC 5C,
20 that has a lot of that, and 5D, that what's coming in the
21 neighborhood is -- it balanced itself out. That we're still
22 a community and not just getting anything in that area, and
23 that people understand what matter of right means.

24 We know what it -- we have an idea, but at the
25 same time, we have to also make sure that the agencies are

1 working for the residents of the District of Columbia.

2 Thank you.

3 VICE CHAIRPERSON HART: Thank you.

4 MR. TEMPLE: Can I try to add to that briefly,
5 sir?

6 VICE CHAIRPERSON HART: Sure.

7 MR. TEMPLE: Okay. And that is, back to Mr.
8 Hill's point. Mr. Hill said that the permit is appealable,
9 but the certification isn't. But then the question becomes
10 at what point does the matter of right determination become
11 appealable when there is no communication or formal decision
12 basically memorializing or articulating that the matter of
13 right is a right, and the only way that that happens, so I
14 hope you understand my question, and what I'm saying to you
15 is that the matter of right is itself appealable even before
16 there is a permit.

17 I know that because we litigated that and it went
18 up to the Court of Appeals before there was a permit, and I
19 don't know -- I don't remember, it was some years ago, but
20 I know that issue.

21 So to that extent on the legal question, we're
22 saying to you that there's a matter of right issue here that
23 we wanted to bring before you.

24 The other thing I wanted to say to your point, and
25 I respect that a lot because we don't have the resources to

1 spend a lot of time and we want to try to get the dots
2 connected, but I was reading in a Dupont Circle Citizens
3 case, and that was a very complicated case involving a
4 halfway house in the early 1970s, and what the Court of
5 Appeals did, and what this Board did, they said their staff,
6 their large staff, took the lessons from that and they were
7 codified in the case, and they made recommendations to
8 another board saying, hey, here's a problem that exists
9 because it would help to resolve them.

10 All we're trying to do is to bring this to your
11 attention that there's a way to protect the record and also
12 to benefit other communities so that it doesn't keep coming
13 back and forth, because this is an open issue on many fronts
14 that needs to be addressed.

15 CHAIRPERSON HILL: No. I understand, Mr. Temple.
16 Please, go ahead.

17 MEMBER JOHN: So, I have a question for DCRA, but
18 the Chairman wants to take a quick break. So I'll ask the
19 question and we can get the answer.

20 So this whole issue revolves around what is a
21 CBIF. And I saw that there was a regulation cited in your
22 motion. So can you be prepared to discuss that regulation
23 and why you decided in the abstract that all -- not the
24 abstract -- in this case, that the ZA was just really stating
25 in the certificate what a CBIF is and what could be built at

1 that location.

2 So we can talk about that when we get back.

3 CHAIRPERSON HILL: Okay. We're going to take a
4 very quick break. Thank you.

5 MEMBER JOHN: Oh, and one question for --

6 CHAIRPERSON HILL: Oh, sorry.

7 MEMBER JOHN: -- for Mr. --

8 MR. TEMPLE: Temple.

9 MEMBER JOHN: -- Temple, is what is the specific
10 regulation that you're appealing, because before this Board
11 can hear your appeal, there has to be a specific regulation.
12 And the second question is, if there is no lease at that
13 property, then there is no issue for the Board to decide
14 except in the abstract, what is a CBIF.

15 So those are the issues and I'm not sure
16 additional briefings will change that.

17 CHAIRPERSON HILL: Okay. Thank you. We'll be
18 right back.

19 (Whereupon, the above-entitled matter went off the
20 record at 11:06 a.m. and resumed at 11:22 a.m.)

21 CHAIRPERSON HILL: All right, Mr. Moy. Let's come
22 on back here. I lost one of the -- okay. So I believe one
23 of our attorneys on the Board here had a couple of questions
24 for Ms. Lord-Sorensen. I'm going to let that one go first
25 if you wouldn't mind, and then we're going to follow up with

1 the question that was being asked to Mr. Temple, and then I
2 think we're going to continue to talk about this. Okay?

3 MS. LORD-SORENSEN: Okay. Certainly. So what is
4 a community-based institutional facility? That's actually
5 found at 11B-200.2(h). And so, what I wanted to clarify,
6 just taking a step back for a moment, looking at the zoning
7 certification, as Mr. LeGrant mentioned earlier, there are
8 no plans involved. There's no deep-dive investigation. It's
9 just whatever is presented to us.

10 So the individual comes to us, comes to DCRA and
11 says, oh, I'm interested in building a community-based
12 institutional facility, a/k/a adult rehab center. Can I do
13 this in this particular zone? They provide the address, we
14 determine the zone, and we look at the regulations.

15 So in this case, 3400 New York Avenue NE is in the
16 PDR-1 Zone. When you look at the regulations, PDR,
17 production, distribution, and repair, is found in 11J. When
18 you look at 11J, you read the regulations, and it tells you
19 what type of uses are permitted in a PDR.

20 So once you go from 11J, you then have to go to
21 11U, 11U-801 which specifically talks about matter of right
22 uses in a PDR. So specifically when you look at
23 11U-801.1(f), it has community-based institutional facility
24 listed as a matter of right.

25 So, again, when we look at the zoning

1 certification, we look at what is asked of us, we look at the
2 regulations, and if the regulations say this can be built as
3 a matter of right, then the zoning certification just sums
4 up what's already written in the regulations.

5 There's no additional -- I mean, there's no
6 guesswork. We're just reading the regulations and basically
7 writing it down.

8 CHAIRPERSON HILL: Okay. Ms. John, is that good
9 enough for you, in terms of your answer?

10 MEMBER JOHN: I was looking for the definition of
11 a CBIF. What is a CBIF?

12 MS. LORD-SORENSEN: 11B -- oh. Do you want me to
13 read the entire definition to you?

14 MEMBER JOHN: It might help Mr. Temple.

15 MS. LORD-SORENSEN: Certainly. Okay. So, again, at
16 11B-200.2(h), a community-based institutional facility, CBIF,
17 is defined as, 1) A use providing court-ordered monitored
18 care to individuals who have a common need for treatment,
19 rehabilitation, assistance, or supervision in their daily
20 living; have been assigned to the facility; or are being
21 detained by the government, other than as a condition of
22 probation.

23 2) Examples include, but are not limited to, adult
24 rehabilitation home, youth rehabilitation home, or detention
25 or correctional facilities that do not fall within the

1 large-scale government use category; and 3) Exceptions: This
2 use category does not include uses which more typically would
3 fall within the emergency shelter or large-scale government
4 use category.

5 This use category also does not include
6 residential or medical care uses that were previously defined
7 as community residence facilities, health care facilities,
8 substance abuser's homes, or youth residential care homes.

9 MEMBER JOHN: Okay. So basically, the ZA is
10 saying that this is what the regulations says, this is the
11 address, and that's it?

12 MS. LORD-SORENSEN: Yes.

13 MEMBER JOHN: Okay. All right.

14 VICE CHAIRPERSON HART: And I have a follow-up
15 question just for that particular aspect of it. The
16 large-scale government use category that you described in
17 this definition, I'm not exactly sure what that means.
18 Because what it says is, Exceptions: This use category does
19 not include uses which more typically would fall within the
20 emergency shelter or large-scale government use category, and
21 I just don't know what that last part of it means.

22 MR. LEGRANT: Okay. So the section of the
23 regulations that Ms. Lord-Sorensen was referring to are the
24 use categories set forth in Section B-200.2 of the zoning
25 regulations. There's 35 general use categories. These were

1 developed and put into place as part of the ZR16 regulations.

2 Ms. Sorensen just read about what the CBIF is, and
3 there's 34 other ones, including the large-scale government
4 category, which I believe she's pulling up, but we could also
5 read, but it lists things that are -- do you have it down --
6 yes.

7 MS. LORD-SORENSEN: Okay. So under S, Large Scale
8 Government. 1) A use involving services owned, managed, or
9 provided by a governmental entity and associated with
10 providing regional or wider services.

11 2) Examples include, but are not limited to,
12 airports, jails, truck dispatch facilities, or police/fire
13 training facilities; and 3) Exceptions: This use category
14 does not include uses which more typically would fall within
15 the motor vehicle-related or transportation infrastructure
16 use categories.

17 VICE CHAIRPERSON HART: Thank you.

18 CHAIRPERSON HILL: Okay. So, Mr. Temple, Ms. John
19 had a question for you before we went to break. Could you
20 answer that question, please?

21 MR. TEMPLE: I might start off by saying to the
22 first question which was the -- what would we be challenging
23 here, and it's exactly what was just read.

24 What's omitted from the definition of an adult
25 rehabilitation home, and what was omitted in the

1 modification, and it's nowhere to be found in any of those
2 definitions is the term, halfway house.

3 An adult rehabilitation home does not define or
4 include necessarily the term, halfway house, particularly
5 when it's read with the -- what we think is a vague term,
6 community-based institutional facility. But nevertheless --
7 and that has to be viewed in the context of what was just
8 testified to, is that this is really simple. We just look
9 at this and we say, okay, this is okay, and this is a matter
10 of right, and there's no due diligence reviewing examination,
11 et cetera, but then this certifies that this will comply with
12 D.C. zoning regulations.

13 The implication of that is that that results in
14 a decision that the community has to live with, because
15 that's the only -- perhaps you labeled it as a first writing
16 or not, it is the only writing in the record where it says,
17 there is a matter of right.

18 This is the only time the community even knows
19 that there's a matter of right being pursued, is when the
20 community sees this document, if it sees it, and so
21 otherwise, it doesn't see it and it doesn't know it.

22 So, in this particular situation, to go to Ms.
23 John's question, we're challenging the matter --
24 fundamentally, the matter of right determination as it is
25 made in reference here, and what we consider to be a decision

1 under D.C. law when it says it would comply.

2 It says the above-stated address is Zone PDR-1 and
3 the above-stated proposed use, the categories which counsel
4 spoke about, the subject premises, quote, unquote, would
5 comply. Comply is not, we think, is an opinion, it's a soft
6 opinion. This is a compliance ruling in effect.

7 CHAIRPERSON HILL: Okay. Ms. John, did you get
8 your answer?

9 MEMBER JOHN: Yes.

10 CHAIRPERSON HILL: Okay. All right, Mr. Temple,
11 and -- okay. I'm trying to understand, first of all, whether
12 or not you guys are -- or whether or not this was in our
13 purview, right, so I'm first with that, right. And the
14 certificate that you hold up again, and I -- we've read
15 through the record and I've actually printed out this one and
16 I have it in front of me, the last part of it, it does say,
17 certificate of the proposed use upon the indicated date does
18 not, all in caps, does not imply future approval of building
19 plans and/or certificate of occupancies.

20 So the way I'm viewing this, and I'm just trying
21 to -- you keep going back to this, so again, to me, this is
22 just saying that this is not a building permit, this is not,
23 you know, anything that is concrete. You could come back
24 tomorrow and whatever plans you put forward to us, you could
25 still get a denial, okay.

1 So you can have -- I'm just -- I'm reading the
2 exact same piece of paper that you put up, okay?

3 MR. TEMPLE: But with all due respect, that's not
4 the legal issue, because the legal issue is a decision is
5 being made under D.C. statute which has implications.

6 Now, this disclaimer doesn't obviate the fact that
7 there is a fundamental legal decision that's being made that
8 has very certain and specific legal --

9 CHAIRPERSON HILL: Okay, okay. So, Mr. Temple,
10 I'm just, again, sharing, you know, because you've held that
11 piece of paper up a couple of times, and that that's one
12 issue, right.

13 MR. TEMPLE: Yes.

14 CHAIRPERSON HILL: The other issue that is
15 actually -- that is the issue in terms of the dismissal is
16 whether or not, you know, you -- this -- you're talking
17 about, you know, notice and unconstitutional and things like
18 that, that had nothing to do with that certificate, okay.
19 And so, I'm just kind of making a statement here and we can
20 still see where we go with this.

21 In terms of --

22 MR. TEMPLE: I don't understand what you -- with
23 all due respect, I don't understand what you said, has
24 nothing to do with that piece of paper.

25 CHAIRPERSON HILL: I'm saying that you -- the

1 motion to dismiss was based on -- there was, like, notice and
2 whether or not, you know, due process -- and so that is not
3 the same thing as whether or not this notice that -- this
4 zoning certification is actually or not an appealable
5 issuance before the Board, and whether or not this is
6 actually a permit or something that's -- I mean, I know it's
7 not, I mean, it's not something that you could go, they
8 haven't. And what the Zoning Administrator is implying, or
9 not implying, is stating, is that there were no plans. There
10 was no building plans.

11 They're just coming forward to say someone is
12 asking them again whether or not this is something that is
13 a permitted use matter of right in this zone and he came back
14 and said, yes it is, and that's what -- and so, then what it
15 gets into more, and this is where I'm just, again, you know,
16 I'm not out -- Mr. Miller is here as a representative of the
17 Zoning Commission, where, again, there are different areas
18 that are within their purview that is not within ours.

19 However, I understand all of the background in
20 terms of that, you know, when is the community notified, how
21 is the community notified, how would you have an opportunity
22 to know what's in your community and whether or not that is
23 something that ends up being argued about at the comp plan
24 level or, again, with, you know, the flume -- you know, the
25 maps and such, you know. That's what I'm trying to

1 understand.

2 So I don't know if I was just making a statement.
3 So does anybody have any more questions of the applicants?
4 Okay. So does anybody have any more questions -- oh, I'm
5 sorry. Please, Ms. John.

6 MEMBER JOHN: I was just wondering, Mr. Chairman,
7 if you were going to the property owner next.

8 CHAIRPERSON HILL: I thought the property owner
9 had his opportunity to speak. I mean, I'm just trying to
10 understand whether or not we, as a Board, are going forward
11 with this, or if you need anything more to understand whether
12 or not we're going to rule on the motion for dismissal.

13 And so -- but if, Ms. John, you'd like to hear
14 from the property owners? Okay. So, apparently, Ms. John
15 would like to hear from the property owner and Mr. Glasgow,
16 please go ahead.

17 MR. GLASGOW: This will be very brief, Mr.
18 Chairman. I think from everything that you've heard that
19 with respect to this property, this case is moot.

20 CHAIRPERSON HILL: Mr. Temple, I'm sorry. If you
21 could just turn off that microphone there. Thank you. I'm
22 sorry. It just, it feeds back.

23 MR. GLASGOW: Right. I think this is all
24 established that this case is moot. There is no case for
25 controversy with respect to this property. We put on the

1 record that there is no lease or any right to utilize this
2 property for the use that's being challenged with respect to
3 this specific piece of property.

4 I think what the community is talking about is
5 some type of general issue that they want to have, almost in
6 the form of an advisory opinion with respect to this issue.

7 So that since the Board's notice was specific to
8 this property in the allegation of a use that, with respect
9 to this specific piece of property, that has not been
10 undertaken, the case is moot.

11 Thank you.

12 CHAIRPERSON HILL: Okay. Does anybody have any
13 questions for the property owner? Please, go ahead. Or
14 whoever, Mr. Miller.

15 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman.

16 CHAIRPERSON HILL: Just to let everybody know, we
17 don't take public testimony. Somebody is raising -- we don't
18 take public testimony during appeals, but -- sorry.

19 ZC VICE CHAIR MILLER: So I think it might be
20 helpful, I'm just throwing this out, one -- just one of four
21 of us up here, it might be helpful to have the property
22 owner's motion to dismiss that you've joined in, verbally,
23 I guess, today, in writing.

24 It might be helpful to have that in writing before
25 us, and it might -- and Mr. Temple asked for, at one point

1 in his statement, asked for time to develop the record in
2 response to -- to provide something in writing in response
3 to the motion to dismiss because it was filed relatively
4 recently. And it would be helpful at least to me -- I don't
5 know if any of my other Board members would find this
6 helpful, it would be helpful in Mr. -- the Arboretum
7 Association's response to the motions to dismiss, that there
8 be substantive responses to the arguments that are being
9 made, as well as further elaboration to the answer that Ms.
10 John was trying to elicit from you as to what the error is
11 in the -- in this certification that a CBIF is not -- is
12 permitted in a PDR-1 zone.

13 Clearly, a CBIF, community-based institutional
14 facility, by the terms of the zoning regulations themselves,
15 is permitted in a PDR-1 zone, and that is basically all that
16 that certificate said. It didn't say that this 300-bed
17 facility that's been bandied about for that property is being
18 approved, or is a CBIF, even.

19 It just said a CBIF is -- so, but if you have an
20 argument to make that the proposal that's been out there that
21 is not a CBIF, make it. Or you may -- but I agree, also,
22 with my colleagues, that the venue for the process issue of
23 this type of certificate being appealable may be something
24 that the Zoning Commission should take up in consultation
25 with the Zoning Administrator as to what the implications of

1 that would be and with the executive branch of the
2 Government, as others in the executive branch in our counsel.
3 And there may be something to take up with the Zoning
4 Commission in terms of the definition of CBIF.

5 You've referred to vagaries of that definition.
6 There may be something to take up, but it's not really before
7 -- I agree that it's not really before this Board, at this
8 time, unless you can make an argument that a CBIF is not
9 permitted in a PDR-1 zone, because that's basically all that
10 this thing said.

11 So you may have an argument before the Zoning
12 Commission -- you may want to make a case before the Zoning
13 Commission on the notice of the certificate issue and on the
14 -- better defining CBIF, and you may want to, as Chairman
15 Hill said, go to your elected officials to get the land use
16 map changed so that this would not be a PDR-1 zone, it would
17 be a mixed -- it would be a zone -- could be some other zone,
18 you'd have to go through a special exception or some kind of
19 process.

20 So if you got the land use map changed and it
21 became a different type of PDR zone or a different -- or a
22 mixed-use commercial-residential zone, it would have to go
23 through a special exception or some kind of relief process
24 here that would give the community input.

25 Anyway, all I have to say is I think it would be

1 helpful to have Mr. Glasgow, the property owner's motion in
2 writing, personally for me, and to have a written response
3 if you want that opportunity to the motion to dismiss,
4 because we don't have a written response. We just have the
5 oral testimony today, which I appreciate, but it might be
6 more focused if we had that in writing before us.

7 CHAIRPERSON HILL: Okay.

8 ZC VICE CHAIR MILLER: And also, then you -- well,
9 yeah, that's it. Thank you.

10 CHAIRPERSON HILL: Okay. So then, Mr. Glasgow,
11 if you want to go ahead and submit something into the record
12 in terms of your clarifying the property owner's position or
13 also just joining the motion to dismiss for the reasons that
14 DCRA has provided, I think yours were a little bit different
15 in that you're just saying that there's not anything before
16 the company that would have a CBIF -- thank you -- CBIF
17 before us.

18 Then, Mr. Temple, if you want to go ahead and
19 submit something to the record in terms of the response, to
20 both DCRA's motion to dismiss as well as anything that
21 perhaps the property owner goes ahead and put forth, and then
22 we can kind of see where we are at that point.

23 So as far as the community -- as far as people in
24 the audience, again, in terms of an appeal, we don't take any
25 public testimony. Like they just don't -- however, if you

1 are a witness for the appellant, that the appellant has
2 listed, then, you know, it's up to the appellant in terms of,
3 like, if there's anything that you're supposed to be adding
4 or are adding and that's -- you'd have to speak with the
5 appellant, if there's somebody whose here that is a witness
6 with the appellant.

7 Also, the -- I'm just trying to clarify how this
8 process works and that I do think though -- OAG, I always,
9 or I shouldn't say I always forget -- the record is only open
10 for parties, right? I mean, the public doesn't submit
11 anything for appeals, correct?

12 MS. NAGELHOUT: Correct. There's no persons in
13 support or in opposition to an appeal. It's just the
14 parties.

15 CHAIRPERSON HILL: It's just the parties. So then
16 the parties would have to submit something if they had
17 something that they wanted submitted outside of all the
18 testimony you've just given.

19 So does the Board have --

20 MR. TEMPLE: In terms of time, can we have 35 days
21 to respond?

22 CHAIRPERSON HILL: Well, I don't -- let's just --
23 that seems a little bit long to me, but --

24 MR. TEMPLE: I have some other cases that --

25 CHAIRPERSON HILL: That's okay, Mr. Temple. I'm

1 just trying to --

2 MR. TEMPLE: If not --

3 CHAIRPERSON HILL: -- I understand what you're
4 asking, you know, and it's fine to ask. So I don't have any
5 dates in terms of when we would get material back from the
6 parties, right.

7 So, Mr. Glasgow, when do you think you might be
8 able to submit whatever you'd like to submit to the record?

9 MR. GLASGOW: I guess one week.

10 CHAIRPERSON HILL: Okay. So that gives us this
11 Wednesday and then, Mr. Temple, we'll give you two weeks
12 after that. I mean, there's nothing new that's going to come
13 into the record necessarily. I mean, you just saw -- no, I'm
14 saying, in terms of what Mr. Glasgow I think is going to
15 submit, you already have what DCRA is going to submit.

16 So there's nothing new that you're going to get
17 from DCRA. It's just Mr. Glasgow that's going to just
18 basically, I think, say that he's either joining or has
19 something different, and then I know you have a bunch of
20 stuff going on and I guess it --

21 MR. TEMPLE: That's fine.

22 CHAIRPERSON HILL: -- doesn't really matter, I
23 suppose, too much unless the property owner has any time
24 constraints in terms of what he's moving forward on. I mean,
25 does Mr. Glasgow -- do you know whether, you know, three

1 weeks or a month has anything to do with the property owner
2 at this point?

3 MR. GLASGOW: Well, since the property owner isn't
4 using the property for the alleged use and is under no -- and
5 I now have found out from the property owner, they're under
6 no negotiations to use this property in this fashion. This
7 doesn't --

8 CHAIRPERSON HILL: So a month doesn't matter then.

9 MR. GLASGOW: Right. We just want to get this off
10 the books.

11 CHAIRPERSON HILL: Clear it as soon as possible.

12 MR. GLASGOW: Sure. Because it's an appeal on
13 this property.

14 CHAIRPERSON HILL: Sure. I understand. So we
15 could go back and do -- I mean, we could -- and then I'll let
16 the Board say whatever they would like in terms of if we need
17 further testimony from anyone concerning a decision just on
18 the dismissal, or motion to dismiss is a moot meaning, if we
19 could decide that -- because I also just don't want to waste
20 anybody's time in terms of, you know, if we can decide
21 whether or not this should be dismissed as either according
22 to what DCRA believes the dismissal should be or what the
23 property owner believes the dismissal should be, then we can
24 at least determine that as the decision three weeks from
25 today perhaps, right, and then if, in fact, it was something

1 that we thought was an appealable -- something that's
2 appealable before the Board, we could then come back and
3 schedule another hearing. Does that sound adequate? Okay.

4 So then, in that case, we would go ahead, Mr. Moy,
5 and schedule a decision for three weeks from today. And so
6 then --

7 MR. TEMPLE: Excuse me, excuse me.

8 CHAIRPERSON HILL: Sure, of course, Mr. Temple.

9 MR. TEMPLE: I just want to be clear. The
10 motion's coming a week from today?

11 CHAIRPERSON HILL: So, as I understand it, and you
12 guys can let me know, meaning DCRA and the property owner,
13 there's nothing new coming from DCRA. They've already
14 submitted their motion to dismiss --

15 MR. TEMPLE: Right.

16 CHAIRPERSON HILL: -- as, you know, it's not
17 within our purview, right.

18 So then I was just providing the building owner
19 an opportunity to add anything to the record in terms of
20 whether they'd like to join that motion or whether they have
21 a different motion because I was a little unclear as to
22 whether or not -- the property owner seems to be saying it's
23 moot because they don't have any --

24 MR. TEMPLE: I understand.

25 CHAIRPERSON HILL: Oh, sure. All right.

1 MR. TEMPLE: That's not my question though.

2 CHAIRPERSON HILL: Oh.

3 MR. TEMPLE: My question was timing because if he
4 has a week and you're giving me two weeks, I want to make
5 sure you had enough time to read the record if you're going
6 to make a decision and --

7 CHAIRPERSON HILL: Sure. No, we had -- I
8 understand. I understand.

9 MR. TEMPLE: The same day that I give you --

10 CHAIRPERSON HILL: We haven't gone to the -- we
11 haven't gotten to when you would submit your --

12 MR. TEMPLE: Oh, okay.

13 CHAIRPERSON HILL: -- response. That's okay. I
14 was going to turn to the Secretary, but since -- what I'm
15 trying to understand, Mr. Temple --

16 MR. TEMPLE: I misunderstood.

17 CHAIRPERSON HILL: That's okay. I mean, you have
18 three weeks. I don't think there's anything new coming into
19 the record necessarily and you've got three weeks from today,
20 right, to where we would have made a decision, right.

21 So just on the one -- the two issues as to whether
22 or not it's a motion to dismiss, right. So basically, you'd
23 have -- right. If we had a week to read through whatever the
24 material is that you're going to submit, okay, then that
25 means you would have to submit to us something to us in

1 probably like two weeks or two and a half weeks, right, okay.
2 And you wanted 35 days just a minute ago, which was kind of
3 arbitrary to me, I don't know where you got 35, but -- so if
4 we did, you know, a month from now, right, then would that
5 harm the property owner? And I can't determine whether or
6 not you think that would.

7 MR. GLASGOW: Well, when you're in any kind of
8 negotiation, once again, there's no negotiation --

9 CHAIRPERSON HILL: Okay.

10 MR. GLASGOW: -- with Mr. --

11 CHAIRPERSON HILL: Mr. Glasgow, we're going to do
12 this in three weeks, okay? So we've had the -- you've had
13 this now for a little while. I don't think, you know,
14 whatever you'd like to submit, Mr. Temple, can you do it,
15 let's see, what's two weeks from today or even that Friday,
16 that gives us --

17 MR. TEMPLE: Two weeks from --

18 CHAIRPERSON HILL: -- so Friday is the 1st,
19 November 1st, right. Two weeks from today is the 30th. So
20 November 1st. That would still give us time to do the
21 decision then by the 6th.

22 So is November 1st --

23 MR. TEMPLE: That's a little bit ambitious for me,
24 quite frankly. And I respect your schedule, but you're
25 cutting me for one week now. You're cutting me to two weeks

1 instead of three weeks. Can I get two weeks from the time
2 that they submit their motion?

3 CHAIRPERSON HILL: Mr. Glasgow, can you give me
4 what you need by Friday?

5 MR. GLASGOW: Yes.

6 CHAIRPERSON HILL: Okay. So that will give you
7 two weeks, okay?

8 MR. TEMPLE: See, the problem isn't that time.
9 The problem is I have competing litigation.

10 CHAIRPERSON HILL: Mr. Temple, I'm trying to do
11 my best over here, too. I've got, like, cases for days up
12 here, right. And so, you know, this is not your only appeal
13 -- my only appeal at all, right. And so, I mean, I can --
14 well -- so anyways, so we'll give you two weeks, okay --

15 MR. TEMPLE: Thank you.

16 CHAIRPERSON HILL: -- to go ahead and give us
17 something into the record. So then you'll give us something
18 into the record on the 1st, okay, November 1st. And Mr.
19 Glasgow, you'll give us whatever you need to give us by
20 Friday.

21 MR. GLASGOW: Yes, sir.

22 CHAIRPERSON HILL: Okay. Mr. Moy?

23 SECRETARY MOY: I think you've given the dates,
24 so --

25 CHAIRPERSON HILL: Okay. So we're going to get

1 everybody's responses in -- oh, I'm sorry. We're going to
2 get the response from the property owner, DCRA is not
3 submitting anything new to the record, correct?

4 MS. LORD-SORENSEN: Correct.

5 CHAIRPERSON HILL: Okay. So the property owner
6 is going to give us whatever they're going to give us by
7 Friday. That'll give Mr. Temple until the 1st of November
8 to give us whatever he'd like to give us, and then -- I mean,
9 if you want until the 4th, Mr. Temple, that'll give you the
10 whole weekend after that. Okay, fine.

11 So, Mr. Moy, let's give him until the 4th, okay?

12 SECRETARY MOY: To the?

13 CHAIRPERSON HILL: The 4th of November.

14 SECRETARY MOY: November 4th, which is a Monday.

15 CHAIRPERSON HILL: A Monday.

16 SECRETARY MOY: So then the Board can hear this
17 on --

18 CHAIRPERSON HILL: We're going to --

19 SECRETARY MOY: November 6th or do you want the
20 13th?

21 CHAIRPERSON HILL: Well, this is what I'm a little
22 confused by, and maybe LAG can even help us. I'm saying that
23 we're going to make a decision on the 6th about whether or
24 not we're going to be dismissing this appeal. And so, can
25 I put that on the meeting calendar?

1 SECRETARY MOY: Yes.

2 CHAIRPERSON HILL: Okay. All right. So there you
3 go. Okay. And so we'll do that. All right? All right, Mr.
4 Moy, are we good?

5 SECRETARY MOY: Yes.

6 CHAIRPERSON HILL: Okay. Does everybody
7 understand?

8 SECRETARY MOY: Yes, sir.

9 CHAIRPERSON HILL: Okay. And Commissioner, thanks
10 for coming down. And I know it doesn't -- it's not smooth
11 and it -- but what are you going to do?

12 All right. Okay. All right, we're taking a break
13 again because we're going to take a quick break again.

14 (Whereupon, the above-entitled matter went off the
15 record at 11:50 a.m. and resumed at 12:08 p.m.)

16 CHAIRPERSON HILL: All right, Mr. Moy, whenever
17 you're ready.

18 SECRETARY MOY: Thank you, Mr. Chairman. The
19 Board is back in session and the time is at or about 12:05
20 and I believe we're back to the top of the batting order.
21 And so that would be case Application No. 20125 of
22 Christopher and Marcelline Green. If you can come to the
23 table.

24 This is a request for a special exception. It's
25 under Subtitle D, Section 5201, from the lot occupancy

1 requirements Subtitle D, Section 304.1, and the maximum
2 building area requirement, Subtitle D, Section 5006.1, to
3 construct a rear garage and carport addition, R-1 B Zone.
4 This is at 1216 Decatur Street, Northwest, Square 2921, Lot
5 26.

6 CHAIRPERSON HILL: Thank you, Mr. Moy. If you'd
7 please introduce yourselves for the record from my right to
8 left.

9 MR. SIEBER: Derrick Sieber for the contractor
10 that put the application together.

11 CHAIRPERSON HILL: Can you spell your last name,
12 please, for us, sir?

13 MR. SIEBER: Yes, sir. Sieber, S-I-E-B as in boy,
14 E-R.

15 MR. GREEN: I'm Christopher Green, the home owner.

16 MS. GREEN: Marcelline Green, home owner.

17 CHAIRPERSON HILL: Okay, great. All right, who
18 is going to be presenting to us?

19 MR. GREEN: I will.

20 CHAIRPERSON HILL: Mr. Green, okay, Mr. Green.
21 All right, let's see, a couple of things before you start
22 here. So if you wouldn't mind just tell us a little bit
23 about the project and what you're trying to do and then also
24 if you could speak to the standard in which you believe we
25 should grant the relief requested. Okay?

1 I'm going to put 15 minutes on the clock just so
2 I know where we are and then I do have a couple of quick
3 questions. This is your home, is that correct?

4 MR. GREEN: Yes.

5 CHAIRPERSON HILL: You need to speak in the
6 microphone. You just have to say yes there.

7 MR. GREEN: Yes.

8 CHAIRPERSON HILL: Okay, do you guys like cars?

9 MR. GREEN: Yes.

10 CHAIRPERSON HILL: Okay, good, just curious.
11 Because I really am jealous of your garage.

12 Okay. So Mr. Green, why don't you go and walk us
13 through the presentation and you can begin whenever you like.

14 MR. GREEN: Okay. Well, what we're trying to do
15 here is and first of all, we're continuing to improve our
16 home that I've lived in for 50 years. It's my family home.
17 My wife and I took it over in 2013 from the family after my
18 parents deceased. And we before that renovated the entire
19 home. So this garage is like the last stage of what we want
20 to do to complete the project and the property value of the
21 home.

22 We're asking for relief because we wanted to
23 actually build a two-car garage with a carport and we were
24 able to, I guess, with existing footprint that we currently
25 have on the property right now, we have like a one-car garage

1 with a driveway. So we're not really asking for any
2 additional space beyond what is already there. We're just
3 using pretty much the same footprint of what's already been
4 developed, but we're just building a structure over top of
5 it at this point.

6 So what we're asking for is a two-car garage with
7 a carport and the carport has a roof, so I think what we
8 could actually build without getting relief was a two-car
9 garage and a driveway, okay, which doesn't consist of a roof.
10 So our relief and why we're here is so that we can build this
11 roof above the garage, the carport area.

12 So the other reasons for the relief is we have
13 like several issues on our block that we deal with
14 constantly. We have people who like the Cars-To-Go. I think
15 our neighborhood is some kind of hub or something because
16 like, you know, we already have difficulty finding parks for
17 all the neighbors who live there because most neighbors have
18 at least two cars. But then we have to deal with people who
19 are doing the Airbnb. And then we have commercial
20 distribution people coming through, parking vehicles, leaving
21 them overnight. So it's really difficult.

22 If you go out in the evening and just want to go
23 out to dinner and come back, you're not going to find
24 parking. You're going to park somewhere off of the avenue.
25 And I have a concern for my wife, if she goes out, she has

1 to come back and then walk through the neighborhood at night
2 and that's not safe. Although we do have a driveway in the
3 back currently, we park back there when we can. We're asking
4 for that relief so that we can actually put more vehicles
5 back there and get them off the street.

6 CHAIRPERSON HILL: Okay. Mr. Green, okay, that's
7 fine. Does the Board have any questions for Mr. Green?

8 VICE CHAIRPERSON HART: Just one question, what's
9 the size of the garage? And the only reason I ask that is
10 that the Office of Planning actually noted in their report
11 that there was just -- they said -- and their report, page
12 two of their report, they said that there's an estimate of
13 the size of the existing garage and then of the proposed
14 garage. And it shouldn't be an estimate. It should be a
15 particular number. So you all have that number. I just
16 don't know what that it is.

17 MR. SIEBER: I can speak to that.

18 VICE CHAIRPERSON HART: Sure.

19 MR. SIEBER: Prior to coming, I calculated to the
20 foot exactly where it's at. I think I also exchanged an
21 email with Mr. Jesick over in OP. We have the number right
22 about 840, perhaps 842 and that's reflective of the building
23 footprint and not necessarily any soffit projection. So the
24 footprint, as I've calculated, is about 840.

25 VICE CHAIRPERSON HART: That includes the carport

1 and then the enclosed area?

2 MR. SIEBER: Correct. This structure has
3 essentially a roof that covers three cars for all intents and
4 purposes. So the footprint of that entire structure is 840
5 as I've calculated it.

6 VICE CHAIRPERSON HART: Okay, and then the
7 existing?

8 MR. SIEBER: If you give me just one moment, I can
9 answer that.

10 VICE CHAIRPERSON HART: OP is saying 384, but
11 again, they're just saying it's an estimate, so I just was
12 trying to understand what that was. It's more just for my
13 understanding more.

14 MR. SIEBER: Existing, I have it as 371.

15 VICE CHAIRPERSON HART: Thank you.

16 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman.
17 I applaud you for working with the neighbors and getting
18 their support and the ANC. It certainly makes our life a lot
19 easier up here.

20 Just in response to your testimony, just a couple
21 -- a question or comment. Do you have residential permit
22 parking on your block?

23 MS. GREEN: Yes, we do.

24 ZC VICE CHAIR MILLER: And you still have the
25 problem with the parking by non-residents?

1 MS. GREEN: We do. We do have residents that rent
2 out their facilities, so as an incentive to rent in their
3 home, they use those parking permits.

4 ZC VICE CHAIR MILLER: Visitor parking permits?

5 MS. GREEN: Yes.

6 ZC VICE CHAIR MILLER: That is given out free by
7 the city to every household.

8 MS. GREEN: Exactly.

9 ZC VICE CHAIR MILLER: Unbelievable. Although we
10 use it frequently when we have workers coming, but it's --
11 anyway, I've had that discussion with DDOT before and
12 continue to have it.

13 On the short-term rental issue that you have, you
14 may know that the Zoning Commission happens to be having a
15 public hearing tomorrow night on short-term rental, on the
16 whole short-term rental housing issue. You're welcome to
17 tune in to our live stream or come on down if you want to be
18 down here again in this room, since you're enjoying it so
19 much today.

20 MS. GREEN: Yes. We are aware of that and we were
21 planning on, if not coming physically, listening in to it.

22 ZC VICE CHAIR MILLER: Thank you.

23 CHAIRPERSON HILL: Okay, I'm going to the Office
24 of Planning.

25 MR. JESICK: Thank you, Mr. Chairman and members

1 of the Board. The Office of Planning supports the
2 application. Just for the record, I concur with the
3 applicant's calculation of building area. I had included the
4 soffit projections in my number, but the definition of
5 building area excludes those projections. So the number of
6 842 is the correct number.

7 I'd be happy to take any other questions. Thank
8 you.

9 CHAIRPERSON HILL: Does the Board have any
10 questions for the Office of Planning?

11 (No response.)

12 CHAIRPERSON HILL: Does the applicant have any
13 questions for the Office of Planning?

14 (No response.)

15 CHAIRPERSON HILL: Is there anyone here wishing
16 to speak in support?

17 (No response.)

18 CHAIRPERSON HILL: Is there anyone here wishing
19 to speak in opposition?

20 (No response.)

21 CHAIRPERSON HILL: Mr. Green, is there anything
22 you'd like to add at the end?

23 MR. GREEN: No, thank you.

24 CHAIRPERSON HILL: So I'm going to go ahead and
25 close the hearing. Is the Board ready to deliberate? Okay.

1 I actually didn't have an issue with this. I
2 believe the analyses that were provided by the Office of
3 Planning I would agree with, as well as that which is in
4 support of the ANC, as well as the letters of support that
5 they received. I know I was being a little flippant, not
6 flippant, this is a nice garage. So I would go ahead and
7 vote to approve this project.

8 Is there anything else anyone else would like to
9 add?

10 Go ahead and make a motion to approve Application
11 No. 20125 as captioned and read by the Secretary, and ask for
12 a second.

13 VICE CHAIRPERSON HART: Second.

14 CHAIRPERSON HILL: Motion has been made and
15 seconded. All those in favor say aye.

16 (Chorus of aye.)

17 All those opposed?

18 (No response.)

19 Motion passes. Mr. Moy?

20 SECRETARY MOY: Staff would record the vote as 4-
21 0-1 and this is on the motion of Chairman Hill to approve the
22 application for the relief requested. Seconding the motion
23 is Vice Chair Hart; also in support Ms. John and Zoning
24 Commissioner Robert Miller. And we have no other Board
25 Members today.

1 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you
2 all very much.

3 SECRETARY MOY: Thank you, Mr. Chairman.

4 (Pause.)

5 SECRETARY MOY: The next case application, if we
6 can have the parties to the table, to No. 20126 of Chad
7 Clark. And this a request for a special exception under
8 Subtitle D, Section 5201 and 1206.4, from the rear addition
9 requirements, Subtitle D, Section 1206.3, to construct a
10 three story rear addition to an existing attached principal
11 dwelling unit, R-20 Zone. This is at 1614 34th Street, NW,
12 Square 1277, Lot 204.

13 CHAIRPERSON HILL: All right, thank you, Mr. Moy.
14 Could you please introduce yourselves for the record from my
15 right to left?

16 MR. CRENSHAW: Melvin Crenshaw.

17 MS. SHARE: Tahani Share from Landis
18 Architects/Builders on behalf of the owner, Chad Clark.

19 CHAIRPERSON HILL: Okay. Ms. Share, are you going
20 to be presenting to us or no?

21 MS. SHARE: Yes.

22 CHAIRPERSON HILL: Okay, great. Mr. Crenshaw, can
23 you turn off your microphone. If there's more than one on,
24 it feeds back.

25 Ms. Share, if you can just go ahead and again tell

1 us about your project, what you're trying to do. I did have
2 a couple of questions about it, but we'll go ahead and see
3 how this goes in terms of the presentation. And again, speak
4 to the criteria and the standard as to why you believe we
5 should grant this relief.

6 I'm going to put 15 minutes on the clock, Mr. Moy.
7 And you can begin whenever you like.

8 MS. SHARE: Okay. So I'd like to start with the
9 lot size. So we have this property in Georgetown with the
10 lot size of 2499 and we have existing lot coverage of 47
11 percent. Our proposal is to do a rear addition that will go
12 out 12 feet and align with the adjacent property to the north
13 and will leave a rear setback of 91 feet and will put the
14 total new proposed lot coverage to 55 percent.

15 So as you see, we are in compliance with the
16 zoning regulations except for our neighbor on the south side
17 because that neighbor didn't add anything yet to his
18 property, so we are -- the existing house is already 16 feet
19 past the owner to the south. And we are proposing additional
20 12 feet so that would put us at 28 feet of request for a
21 variance -- for a special exception, I'm sorry, from our rear
22 setback requirement.

23 So the first thing the home owners did when they
24 thought about the project, they contacted the neighbors and
25 they have the support of both neighbors. And we also

1 conducted a sun or shadow study which illustrated that
2 actually doing that addition because of the location of the
3 property and the addition being to the west, west side, there
4 will be no negative impact of the light afforded to the
5 property to the south. It will continue to have -- during --
6 we simulated like four, five times during the day where that
7 light will not be affected by the addition we are proposing.

8 So the light and air will not be affected. The
9 privacy of the home owners will not be affected as we are not
10 proposing any windows overlooking the back yard of the
11 property to the south. And there are existing fences that
12 will still be there. And the last thing that I want to say
13 is we are again with other zoning requirements in compliance
14 with the zoning regulations.

15 CHAIRPERSON HILL: Okay, I'm just going to kind
16 of cut you off here a little bit and though that might be
17 that you're done. I'm going to let the Board ask any
18 questions of you because I just had a quick question.

19 The neighbor to the south then, so they -- I know
20 they're in agreement, so you haven't gotten any feedback from
21 them in terms of if they're also going to try to build out
22 then to the end?

23 MS. SHARE: They might. We don't know to the end,
24 but I mean I don't want to say something because we haven't
25 signed anything with them but they have contacted with an

1 intention to add.

2 CHAIRPERSON HILL: Sure, sure. Okay. Does the
3 Board have any questions of the applicant?

4 (No response.)

5 CHAIRPERSON HILL: Okay, I'm going to turn to the
6 Office of Planning.

7 MR. MORDFIN: Good afternoon. I'm Stephen Mordfin
8 and the Office of Planning finds this application to be in
9 conformance with the criteria for the approval of the special
10 exception and therefore recommends approval. Thank you.

11 CHAIRPERSON HILL: Does anyone have any questions
12 for the Office of Planning?

13 (No response.)

14 CHAIRPERSON HILL: Does the applicant have any
15 questions for the Office of Planning?

16 (No response.)

17 CHAIRPERSON HILL: Is there anyone here wishing
18 to speak in support?

19 (No response.)

20 CHAIRPERSON HILL: Is there anyone here wishing
21 to speak in opposition?

22 (No response.)

23 CHAIRPERSON HILL: Ms. Share, is there anything
24 you'd like to add at the end?

25 MS. SHARE: I would like to thank you and thank

1 the Office of Planning.

2 CHAIRPERSON HILL: Okay, great. Thank you. I'm
3 going to close the hearing. Is the Board ready to
4 deliberate?

5 I didn't have any issues with this, actually. The
6 only question I had kind of was if the whole block was going
7 to go and again apparently the whole block is going to go.

8 So I thought that I would agree with the analysis
9 that was provided by the Office of Planning in terms of how
10 they believe the criteria is being met. I also agree with
11 the ANC 2E's approval, as well as the burden of proof that's
12 provided by the applicant and be voting to approve the
13 application based on the criteria set forth before us.

14 Does the Board have any other things they'd like
15 to add?

16 (No response.)

17 CHAIRPERSON HILL: I'm going to make a motion to
18 approve Application No. 20126 as captioned and read by the
19 Secretary, and ask for a second.

20 VICE CHAIRPERSON HART: Second.

21 CHAIRPERSON HILL: Motion has been made and
22 seconded. All those in favor say aye.

23 (Chorus of aye.)

24 CHAIRPERSON HILL: All those opposed?

25 (No response.)

1 CHAIRPERSON HILL: The motion passes. Mr. Moy?

2 SECRETARY MOY: Staff would record the vote as 4-
3 0-1. And this is on the motion of Chairman Hill to approve
4 the application for the relief being requested. Seconding
5 the motion is Vice Chair Hart. Also in support is Ms. John
6 and Zoning Commissioner Robert Miller. And we have no other
7 board members today. Motion carries, sir.

8 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you
9 all very much.

10 (Pause.)

11 SECRETARY MOY: The next case application before
12 the Board is No. 20106 of Jorge Ventura. This a special
13 exception under Subtitle C, Section 703.2, for the minimum
14 parking requirements, Subtitle C, Section 701.5, and pursuant
15 to Subtitle X, Chapter 10. This is for an area variance from
16 the lot occupancy requirements of Subtitle E, Section 304.1,
17 to construct a two story principal dwelling unit addition on
18 an existing retail use building, RF-1 Zone. This is at 328
19 Kentucky Avenue, SE, Square 1039S, Lot 17.

20 CHAIRPERSON HILL: All right, great. Thank you,
21 Mr. Moy. If you could please introduce yourselves for the
22 record?

23 MR. PICHON: My name is Sean Pichon with PGN
24 Architects.

25 MS. ESCOBAR: My name is Laura Escobar with PGN

1 Architects.

2 CHAIRPERSON HILL: Could you spell your last name
3 for us, please?

4 MS. ESCOBAR: Escobar, E-S-C-O-B-A-R.

5 CHAIRPERSON HILL: Okay, Mr. Pichon, how do you
6 spell your last name?

7 MR. PICHON: P-I-C-H-O-N.

8 CHAIRPERSON HILL: Okay. It's a very good name.
9 Sean Pichon.

10 All right, Mr. Pichon. Are you going to be
11 presenting to us, I assume?

12 MR. PICHON: Yes.

13 CHAIRPERSON HILL: Okay, if you want to go and
14 tell us about the project. At least this is the most
15 interesting project of the day, I've got to tell you that.
16 And then, if you want to go ahead and walk us through why you
17 believe you're meeting the standard for which we should grant
18 the relief requested.

19 We're going to put 15 minutes on the clock, Mr.
20 Moy, if you don't mind. And you can begin whenever you like.

21 MR. PICHON: Okay. Thank you, Board, for having
22 us this afternoon. I'll run through this fairly quickly.
23 We are looking to develop, as Mr. Moy stated, existing retail
24 use that's been there for the last several decades in
25 existence. This has been a use as a community service for

1 many years. It's been under the current ownership for the
2 last 12 years. He's looking to do upgrades to the existing
3 use as this neighborhood has gone through significant changes
4 in recent years. The property directly caddy-corner to this
5 is currently undergoing a large redevelopment of the Safeway
6 where they're adding housing on top.

7 In order for his business to continue to stay in
8 competition with the rest of the neighborhood, he's looking
9 to do some upgrades. In addition to that, adding the
10 residential unit on top would allow for an additional
11 residential unit in the neighborhood for either himself to
12 live above his retail shop or potentially selling or renting
13 to another entity. That is the nature of the project and why
14 he's attempting to do this.

15 As far as the zoning reliefs are concerned, the
16 property is located at the intersection of 14th and Kentucky
17 Avenue and D Street, SE. As I mentioned, caddy-corner to
18 this, there's a large Safeway that is currently under
19 construction. The property is the culmination of a
20 triangular block. This is the last lot on that block that is
21 triangular in nature.

22 There are inherent peculiarities with this
23 property based on its size and shape that have created the
24 need for zoning relief. The current building structure
25 that's there occupies 100 percent of the lot and it is 580

1 some odd square feet. So the lot itself is small. It's in
2 the RF-1 Zone. So the occupation of 100 percent of the lot
3 affords you the ability to have a useful structure there.
4 Adhering to the 60 percent lot occupancy would limit us to
5 a footprint that would not produce more than 300 square feet
6 which would not produce a valuable size of property.

7 So the existing building which we've shown here
8 is a triangular-shaped building. It consists of 100 percent
9 lot occupancy. It also has bay projections into the public
10 right of way. Those bay projections are currently
11 storefronts as pictured here that have the roll down grills.
12 Part of this renovation will be to -- in addition will be to
13 upgrade those storefront elements so that they're more
14 inviting and community serving.

15 So this is a shot of the rear of the building.
16 This is a shot of the front of the building. The building
17 currently, the liquor store fronts on Kentucky Avenue because
18 adjacent on the rear of the property across 14th Street is
19 a school, so the use is facing towards Kentucky Avenue to
20 minimize the impact on the elementary school directly behind
21 it.

22 We are going to continue that use as we propose
23 an addition to the building. The residential use will have
24 access from the rear, so 14th Street will be the entry point
25 for the residential unit and the commercial use will remain

1 access off of Kentucky Avenue.

2 The rear property, the rear bay projection will
3 continue to be primarily solid in the new design for the same
4 purposes as we do not want to have visual impact on the
5 school directly behind us. On the 14th Street side, there
6 will be more open glazing and inviting storefront for the
7 neighborhood to have visual impact.

8 On the upper floors, the residential units, one
9 residential unit will have access from 14th Street. It will
10 be a two bedroom single family home, two stories. On the
11 first level of that will be living and kitchen and formal
12 uses. And then on the upper floors will be the two bedrooms
13 and bathrooms.

14 This is an image of the Kentucky Avenue side of
15 the building. Again, as I mentioned before, we're going to
16 maintain the commercial use down here and open up the
17 storefront to provide an inviting look. On the rear, which
18 we're considering the rear, the 14th Street side, you'll
19 notice that the facade at the ground floor level is majority
20 solid with clear story windows to allow light and air into
21 the storefront, but not to provide a visual connection to the
22 14th Street side.

23 CHAIRPERSON HILL: Mr. Pichon?

24 MR. PICHON: Yes.

25 CHAIRPERSON HILL: How do you get down to that

1 patio?

2 MR. PICHON: That's for the residential unit. The
3 entry point is --

4 CHAIRPERSON HILL: I see, for the residential
5 there.

6 MR. PICHON: It's there --

7 CHAIRPERSON HILL: Got it, got it. Okay, I was
8 just curious. Thank you.

9 MR. PICHON: Green space for the residential --

10 CHAIRPERSON HILL: Thank you.

11 MR. PICHON: The primary entry point is here on
12 this facade here. This is a quick section through there.
13 And I'll stop here with an image and then talk specifically
14 about the areas of relief.

15 As mentioned before, we're seeking a variance from
16 the requirement for lot occupancy for all the reasons noted.
17 The size of the lot, the configuration of the lot on the
18 overall block, the triangulated block and this being the
19 triangulated site. The 100 percent lot coverage already
20 exists with the existing building. We're proposing to add
21 two stories on top of that to create this residential unit.
22 So we're continuing the 100 percent lot occupancy that exists
23 on the ground floor up for two more floors.

24 We see that as having no adverse impact on the
25 community or the neighborhood in the sense that the 100

1 percent lot occupancy already exists. And something to note
2 as far as how this fits within the framework of the
3 neighborhood, if you look at the lots adjacent as they go up
4 the block, they're much larger lots. They extend through
5 from Kentucky Avenue through to 14th Street. This is the only
6 lot on that block that has a very small footprint. But the
7 footprint matches with the existing houses that are there.
8 So when we say we're covering 100 percent of the lot, when
9 you actually look at it from a land use perspective, the
10 footprint of the 100 percent lot coverage actually matches
11 with the existing homes that are there on the block.

12 So from a lot occupancy standpoint, we do not see
13 any adverse effect on the building occupying 100 percent of
14 the lot. The height, we're going to go up two stories. The
15 existing houses next to us are two stories with cellars, so
16 we're about a half a story higher than the neighboring
17 properties. But again, this being the corner, kind of
18 culmination of that block, the additional seven feet of
19 height that we're going above the neighboring property, we
20 do not see that as an adverse impact as well.

21 And as far as the special exception, we're
22 requesting relief from the required parking for the single
23 family dwelling unit that we're adding in and that's as we've
24 written out in our record that the lot itself is landlocked.
25 There is no access from any public right of way, alley, or

1 street. So there's no ability to actually provide parking
2 off of any public access. And the impact of a single family
3 home having minus one parking space we do not see that as
4 detrimental. We are within two blocks of the Potomac Avenue
5 Metro Station as well, so we're asking for relief of that one
6 parking space requirement.

7 CHAIRPERSON HILL: Okay, that was actually a bit
8 of a question, I think, as to whether or not you needed the
9 parking relief that I was going to ask the Office of
10 Planning.

11 All right, Mr. Pichon, is that it, or?

12 MR. PICHON: Yes. I am open to -- welcome to take
13 questions.

14 CHAIRPERSON HILL: Okay, does the Board have any
15 questions of Mr. Pichon?

16 VICE CHAIRPERSON HART: Just one question.
17 There's the property that is the National Park Service to the
18 south of you?

19 MR. PICHON: To the south, yes.

20 VICE CHAIRPERSON HART: Have you had any
21 conversation with them, with the Park Service?

22 MR. PICHON: With the Park Service, no.

23 VICE CHAIRPERSON HART: Yeah, I mean I just
24 thought you may want to have a conversation since you are
25 adjoining property owner just to understand if they had any

1 particular concerns about that. I can't really see any, but
2 it's always helpful to understand that.

3 And currently, there is the bays that are existing
4 on the site. And you're maintaining them, but you're
5 maintaining the area, but you're actually -- you're going to
6 be tearing down the entire building.

7 MR. PICHON: No, this is an addition. So we're
8 going to be maintaining the structure of the existing one
9 story.

10 VICE CHAIRPERSON HART: Okay.

11 MR. PICHON: And we're going to be adding on top
12 of it. So we'll be reconstructing the glazing of the
13 storefront.

14 VICE CHAIRPERSON HART: Yes, yes.

15 MR. PICHON: But we will not be --

16 VICE CHAIRPERSON HART: It will be more of a
17 curtain wall that you're kind of putting up?

18 MR. PICHON: Yes, we'll be installing new
19 storefront material there.

20 VICE CHAIRPERSON HART: Okay. And what is the --
21 I was looking at the, I don't know, it seems like there's
22 been some changes in the plan that have kind of gone on. If
23 you can talk to that a little bit. I'm not exactly sure what
24 is the -- on the first floor in this plan. What is the area
25 that is -- what is that supposed to be, kind of circled

1 there, this right here?

2 MR. PICHON: That is the actual current make up
3 of that area is all brick paving. We were representing what
4 the existing material that's there. We were going to be
5 adding, we were going to be proposing to add some greenery
6 outside, out front to make it more inviting, but the current
7 make up of that whole area is brick paving.

8 VICE CHAIRPERSON HART: So what is it going to be
9 used for? I mean it looks like it's being -- there's kind
10 of landscape around it. It's got a delineation. It almost
11 looks like an outdoor kind of seating area, like eating area.
12 Is that what it's intended to be or is it -- I'm just not
13 sure.

14 MR. PICHON: At one point and that may be where
15 some of the confusion is, at one point we were anticipating
16 that being the case, but at this point we are not. We've
17 revised the plans to eliminate any outdoor seating use.

18 VICE CHAIRPERSON HART: So you're saying that it's
19 not included in the actual plans themselves, but the area
20 that is there is just an empty space? It just seems an odd
21 thing to do in that it's not an entry for the -- no, I
22 understand that that's there, but on the north there's an
23 area that's there as well, am I incorrect on that?

24 MR. PICHON: Yes, both sides on the Kentucky
25 Avenue side and the 14th Street side are completely paved at

1 this point.

2 VICE CHAIRPERSON HART: And the north side is the
3 kind of residential kind of outdoor whatever area, but all
4 that's in public space.

5 MR. PICHON: Yes.

6 VICE CHAIRPERSON HART: That's not on your
7 property?

8 MR. PICHON: That is not on our property. That's
9 public space.

10 VICE CHAIRPERSON HART: And have you gone to the
11 Public Space Committee, Commission?

12 MR. PICHON: No, we will be doing that as part of
13 our permit process. We have had input with DDOT through this
14 process and they haven't -- I believe they've submitted
15 something on record with their comments. But we have not
16 gone through a formal public space process yet.

17 VICE CHAIRPERSON HART: Okay, and the areas that
18 are outside of the property line, the bays that you've been
19 calling them, those are -- were those permitted at some point
20 to the Public Space Committee? I mean, because that's
21 outside the property.

22 MR. PICHON: Yes, the current existing structure
23 occupies public space with bay projections and they were at
24 some point of the building being erected permitted from the
25 public space standpoint. And the internal space is being

1 used currently for display and internal function of the
2 store.

3 VICE CHAIRPERSON HART: And you said this is going
4 to be maintained as a liquor and wine store?

5 MR. PICHON: Correct. That is the intent of the
6 owner. He is looking to upgrade his facilities to bring it
7 to a more competitive nature in conjunction with what's going
8 on in the neighborhood, but it will remain a liquor -- and
9 he's looking to advance some of his selection that he has,
10 that he provides to the community now. But it will remain
11 a liquor store.

12 VICE CHAIRPERSON HART: Okay. Thank you.

13 CHAIRPERSON HILL: Anyone else?

14 Mr. Pichon, I was just curious, how come you guys
15 are leaving that -- you're leaving the Albert's sign or
16 Albert's is coming back? Is it a family business? I'm just
17 curious as to the sign. It didn't seem like you're changing
18 the sign. Is that correct?

19 MR. PICHON: Correct. The name of the business
20 is Albert's. There's been no indication of them wanting to
21 change --

22 CHAIRPERSON HILL: No, I'm just saying, even that
23 exact same sign, the font, everything seems kind of the same.
24 I just thought it was interesting, that's all.

25 MR. PICHON: Oh, no.

1 CHAIRPERSON HILL: And then the program in terms
2 of -- and again, I'm just curious if you kind of put back a
3 couple of things, like how -- I mean, you just kind of were
4 like, I'm just kind of curious, just keeping putting back.
5 I'm just again curious on the side of the building, there
6 were like some things that looked like pipes. They're not
7 pipes, but it was just kind of a decorative element I assume.
8 Is that what that is? Yes.

9 MR. PICHON: Those are architectural trellis
10 elements.

11 CHAIRPERSON HILL: Got it. Got it. Okay.
12 Interesting. All right, I'm going to turn to the Office of
13 Planning.

14 Sure, of course, go ahead.

15 VICE CHAIRPERSON HART: One follow-up question.
16 One other question, with regard to the Capitol Hill
17 Restoration Society, could you -- you've seen the letters
18 that they've submitted?

19 MR. PICHON: Yes, we received that, I believe,
20 this morning, so we were able -- we met with Capitol Hill
21 Restoration Society, we hosted them in our office and walked
22 them through the proposed project.

23 I read through their letters. Their take on the
24 existing use being 100 percent lot occupancy and not wanting
25 to increase the nonconformity of that, we're not increasing

1 the use that's there now. That use will remain as is. We're
2 actually decreasing some of it from a square footage
3 standpoint, to get the residential entryway up through there.

4 So we're not seeing this as an increase of the
5 nonconformity of the existing use. We're adding an
6 additional residential unit to increase the marketability of
7 this property and to provide potential residents for the
8 store owner which is a typical use when you have these
9 neighborhoods serving retail places that there's typically
10 owner-occupied residential above it. So the point of this
11 project is to provide that. We're not looking to increase
12 the nonconformity of the use of the existing store.

13 VICE CHAIRPERSON HART: Yes, it looks like they
14 are -- this is kind of a longer letter than they normally add
15 in, but looks like they had some particular issues with the
16 expanding the existing nonconformity. And I understand that
17 you spoke to that.

18 MR. PICHON: Yes.

19 VICE CHAIRPERSON HART: Okay, so I think that's
20 it for the questions that I have.

21 CHAIRPERSON HILL: We're going to turn to the
22 Office of Planning.

23 MS. VITALE: Good afternoon, Mr. Chair, members
24 of the Board, Elisa Vitale with the Office of Planning. The
25 Office of Planning is recommending approval of the requested

1 variance relief for lot occupancy. This would be for the
2 existing 100 percent lot occupancy and the two additional
3 residential floors at 100 percent lot occupancy.

4 As noted in our report, the applicant had
5 requested parking relief, however, again as noted, OP did not
6 believe this was required because there is no alley access.
7 Subtitle C, Section 702.3 states that if there is not alley
8 access for a residential use in the RF-1 Zone, then the
9 parking requirement would not apply. So we don't believe
10 it's necessary. The applicant did request it. We did
11 provide analysis based on the applicant's request. We do
12 believe they've met the special exception criteria should the
13 Board choose to grant that requested relief today.

14 Let's see. I think that -- I'll stop there and
15 can answer any questions that the Board may have. I think
16 there may be a few. So I'll end there. Thank you very much.

17 CHAIRPERSON HILL: Thank you. So just as far as
18 the parking goes, the Office of Planning is comfortable
19 leaving the parking in the requested relief and just out of
20 an abundance of caution, I suppose?

21 MS. VITALE: We were merely responding to the
22 applicant's request. Certainly, it would be up to the Zoning
23 Administrator within the Department of Consumer and
24 Regulatory Affairs to make the final determination with
25 respect to the necessary relief. This is a self-certified

1 application. The applicant requested the lot occupancy,
2 requested the parking relief. We've analyzed those, although
3 we note we don't believe the parking is required.

4 CHAIRPERSON HILL: Okay, okay. All right. Does
5 the Board have any questions of Office of Planning?

6 VICE CHAIRPERSON HART: Only about the whole
7 public space issue. It seems like some of the development
8 is being put in public space. The applicant has noted that
9 they've already been permitted for that and they're kind of
10 not reducing the amount of -- they're not -- they're reusing
11 the building structure that's already there.

12 And I didn't know if you had a thought on that.
13 I mean, buildings typically don't go into the public space.

14 MS. VITALE: Correct. Zoning would end at the
15 property line and there are regulations with respect to
16 projections in public space. And the applicant is proposing
17 projections in public space.

18 We coordinate closely with the OP staff that sit
19 on the Public Space Committee. Process-wise, normally an
20 applicant wouldn't go to Public Space until they're
21 submitting their building permit applications.

22 You'll see in the DDOT memo that they advise the
23 applicant to schedule a PDRM which is a preliminary design
24 review meeting. I think there are some considerations with
25 respect to the treatment of the public space that will need

1 to be discussed and resolved when it comes time during that
2 public space application process.

3 I don't think there's an issue with the proposed
4 building projections. We did go over that with the OP staff
5 that sits on the Public Space Committee and they did the
6 calculations and determined I think actually on the upper
7 floors the applicant could even increase those projections
8 beyond what they're proposing. So I don't believe the
9 projections per se are an issue. I think there are other
10 public space issues to be resolved at building permit.

11 VICE CHAIRPERSON HART: Thank you very much for
12 that. DDOT also noted some issues about -- I'm trying to get
13 to their letter now -- that they wanted to have the
14 projections -- that the door recessed in the building. And
15 they didn't say it was a condition, but it was something that
16 they raised on page two of their report, yes, the third
17 bullet, when it talks about the canopy. The very end of that
18 says that -- well, it says that canopies along 14th Street
19 shall not exceed five feet into public space and the doors
20 must be recessed into the building and all entries should be
21 constructed at a grade with the existing sidewalk to minimize
22 the need for stairs and ramps in public space.

23 So some of that I understand. I just wanted to
24 see what your thoughts were on that.

25 MS. VITALE: We would certainly defer to the

1 Public Space Committee on any of these issues. I know they
2 don't generally like doors that swing out into public space,
3 so I'm guessing that that's what that comment is about, but
4 I would defer to the Public Space Committee.

5 VICE CHAIRPERSON HART: And I'm seeing here that
6 the applicant has put in -- I guess there are -- there were
7 some updated drawings.

8 These are the updated drawings that are showing
9 this, Mr. Pichon?

10 MR. PICHON: Correct, and we have for the record,
11 we've brought copies for you guys.

12 VICE CHAIRPERSON HART: But this is already in the
13 record?

14 MR. PICHON: Yes, yes. Sorry.

15 VICE CHAIRPERSON HART: No, it's okay. I just
16 wanted to make sure that I was seeing that. There were
17 several iterations of drawings and so it's sometimes a little
18 bit -- my memory is a little bit short on did I see that or
19 did I not see that? So this drawing shows where this door
20 is recessed on 14th Street and then the door -- I'm sorry,
21 the door on -- is that Kentucky?

22 MR. PICHON: Right.

23 VICE CHAIRPERSON HART: That's on the south?

24 MR. PICHON: Correct. Kentucky is towards the
25 west.

1 VICE CHAIRPERSON HART: And then the 14th Street
2 is already, it's east and it is recessed. So, okay, thank
3 you.

4 MEMBER JOHN: One question. Have you seen -- I'm
5 sure you have -- have you seen the report of the Capitol Hill
6 Restoration Society and their comments about meeting the
7 second element in the variance test? So they acknowledge the
8 condition of the lot creates an exceptional condition. So
9 how do you see that this creates a practical difficulty
10 whether or not the applicant was building upwards for
11 commercial use or for residential?

12 MS. VITALE: I did have a chance to quickly review
13 the CHRS memo. It just came in today, I believe. I think
14 in this instance, the applicant is proposing a residential
15 unit. Residential is contemplated in the RF-1 Zone. The
16 applicant is confronted with the existing ground floor
17 commercial, so in order to construct the matter of right
18 residential use on the property, they have to go up in this
19 case and in going up, the property is unique in its
20 triangular shape and its small size. And in order to achieve
21 a reasonable residential footprint, the 100 percent lot
22 occupancy is necessary, I think, to accomplish a functional
23 residential unit which is a matter of right use in the zone.

24 MEMBER JOHN: And the second part of the question
25 is if they had wanted to extend the commercial use, what

1 would have been the impact? It's not a necessary question
2 if you haven't thought about it.

3 MS. VITALE: Obviously, they weren't proposing
4 that, so we -- that's not something that we've analyzed.

5 CHAIRPERSON HILL: Does the applicant have any
6 questions for the Office of Planning?

7 MR. PICHON: No.

8 CHAIRPERSON HILL: Do we have anybody who wishes
9 to speak in support?

10 (No response.)

11 CHAIRPERSON HILL: Is there anybody here who
12 wishes to speak in opposition?

13 (No response.)

14 CHAIRPERSON HILL: Mr. Pichon, is there anything
15 you'd like to add at the end?

16 MR. PICHON: I would just thank you guys for your
17 time.

18 CHAIRPERSON HILL: Thank you. I'm going to close
19 the record. Is the Board ready to deliberate?

20 Okay, I don't have any issues with this
21 application. I believe, for me, that they've met the
22 criteria for us to grant the application. I was kind of
23 questioning the whole parking relief, but again, it's self-
24 certified and the Office of Zoning -- the Office of Planning
25 has also provided their analysis concerning the parking

1 relief in terms of there's no alley access. I would also
2 agree with the Office of Planning's analysis on all of the
3 relief that was requested by the applicant and the applicant
4 can kind of figure this out at the permitting level or the
5 permitting phase, I suppose in terms of the parking relief,
6 whether it's required or not.

7 I'm glad to see that the ANC -- we did get the ANC
8 report in terms of their support. The Capitol Hill
9 Restoration Society in terms of their concerns, I understand
10 what they have brought up towards us in their letter;
11 however, I would agree with the Office of Planning's analysis
12 in terms of their response to that letter. And I will be
13 voting in support.

14 Is there anything anyone would like add?

15 ZC VICE CHAIR MILLER: I just want to add I think
16 it's a very attractively designed project and glad that
17 they're bringing another residential use to the neighborhood.

18 MEMBER JOHN: I agree with that comment. I was
19 just fascinated by that design.

20 VICE CHAIRPERSON HART: Yes, I had, I know, a
21 number of questions about the overall design and some of the
22 ways in which you were meeting the criteria and some comments
23 that we had gotten from both the Capitol Hill Restoration
24 Society as well as the DDOT, but I understand and I
25 appreciate the response that you have provided. I understand

1 what it was that you were doing. I was more trying to
2 understand some of the changes that had been proposed through
3 this process. I know it's been somewhat of an iterative
4 process to get here and it's sometimes hard to see all of the
5 changes unless you see the images side by side. And it's
6 helpful to show us this kind of where you are now.

7 I would be in support of the application as well,
8 but I do appreciate the information that we've received
9 today. It helped give me a little bit more understanding of
10 the project. So that's it.

11 CHAIRPERSON HILL: Okay, I'll also second. I do
12 think it's a very interesting design and I hope that the
13 future owner enjoys it. I'm going to vote to make a motion
14 to approve Application No. 20106, as captioned and read by
15 the Secretary and ask for a second?

16 MEMBER JOHN: Second.

17 CHAIRPERSON HILL: Motion made and seconded. All
18 those in favor say aye.

19 (Chorus of aye.)

20 CHAIRPERSON HILL: All those opposed?

21 (No response.)

22 CHAIRPERSON HILL: The motion passes. Mr. Moy?

23 SECRETARY MOY: Staff would record the vote as 4-
24 0-1 and this is on the motion of Chairman Hill to approve the
25 application for the relief requested. Seconding the motion

1 is Ms. John. Also in support, Vice Chair Hart and Zoning
2 Commissioner Robert Miller. We have no other members present
3 today.

4 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
5 Moy. Thank you very much.

6 MR. PICHON: Thank you.

7 CHAIRPERSON HILL: Mr. Moy, is there anything else
8 before the Board today?

9 SECRETARY MOY: Nothing from the staff, sir.

10 CHAIRPERSON HILL: Thank you, Mr. Moy. We stand
11 adjourned.

12 (Whereupon, the above-entitled matter went off the
13 record at 1:00 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 10-16-19

Place: Washington, DC

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

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